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Legislative History – Montana Session Law

Chapter: 436 Session L: 2023

Bill Number: SB 216

Checklist of Bill History

History and Final Status Sheet	☑
Introduced Bill	☑
Fiscal Note	☐
Third Reading Bill	☐
Final Version of Bill	☐

House	Senate
Committee: Judiciary	Committee: Business, Labor & Economic Affairs
Hearing Date(s): 3/24/2023	Hearing Date(s): 2/2/2023
Committee Report: 4/4/2023	Committee Report: 2/10/2023

Conference Committee

Hearing Date(s):

Conference Committee Report:

Compiler Notes

Compiled by: SK Marshall

Date: 8/7/2024

Notes: Audio/Video recordings can be found on the Legislature's website here: https://sg001-harmony.sliq.net/00309/Harmony/en

	TRANSMITTED TO HOUSE		
3/10	REFERRED TO NATURAL RESOURCES		
3/17	HEARING		
3/17	COMMITTEE EXEC ACTION — BILL CONCURRED	14	1
3/20	COMMITTEE REPORT — BILL CONCURRED		
3/28	2ND READING CONCURRED	71	29
3/29	3RD READING CONCURRED	66	30
	RETURNED TO SENATE		
3/30	SENT TO ENROLLING		
4/05	RETURNED FROM ENROLLING		
4/07	SIGNED BY PRESIDENT		
4/14	SIGNED BY SPEAKER		
4/14	TRANSMITTED TO GOVERNOR		
4/24	SIGNED BY GOVERNOR		
4/24	CHAPTER NUMBER ASSIGNED		
	CHAPTER NUMBER 239		
	EFFECTIVE DATE: 4/24/2023 - ALL SECTIONS		

SB 216 INTRODUCED BY S. FITZPATRICK *LC1197 DRAFTER: J. WALKER*

REVISE LAWS RELATED TO LITIGATION AND PRODUCTS

1/25	INTRODUCED		
1/25	REFERRED TO JUDICIARY		
1/26	REREFERRED TO BUSINESS, LABOR, AND ECONOMIC AFFAIRS		
2/02	HEARING		
2/10	COMMITTEE EXEC ACTION — BILL PASSED	7	3
2/13	COMMITTEE REPORT — BILL PASSED		
2/15	2ND READING PASSED	33	17
2/16	3RD READING PASSED	33	15
	TRANSMITTED TO HOUSE		
3/13	REFERRED TO JUDICIARY		
3/24	HEARING		
4/04	COMMITTEE EXEC ACTION — CONCURRED AS AMD	11	8
4/04	COMMITTEE REPORT — CONCURRED AS AMD		
4/12	2ND READING CONCURRED	53	46
4/13	3RD READING CONCURRED	52	48
	RETURNED TO SENATE WITH AMENDMENTS		
4/18	2ND READING HOUSE AMDS CONCURRED	35	15
4/19	3RD READING PASSED AS AMENDED BY HOUSE	32	17
4/20	SENT TO ENROLLING		
4/24	RETURNED FROM ENROLLING		
4/27	SIGNED BY PRESIDENT		
4/29	SIGNED BY SPEAKER		
5/01	TRANSMITTED TO GOVERNOR		
5/04	SIGNED BY GOVERNOR		
5/04	CHAPTER NUMBER ASSIGNED		
	CHAPTER NUMBER 436		
	EFFECTIVE DATE: 5/04/2023 - ALL SECTIONS		

SB 217 INTRODUCED BY GILLESPIE *LC4226 DRAFTER: HARDIN*

REVISE RANGELAND IMPROVEMENT LOAN STATE SPECIAL REVENUE ACCOUNT

1/25	INTRODUCED		
1/25	REFERRED TO AGRICULTURE, LIVESTOCK AND IRRIGATION		
2/07	HEARING		

AN ACT REVISING LAWS RELATING TO CIVIL LAWSUITS INVOLVING PRODUCTS; REVISING LAWS PERTAINING TO STRICT LIABILITY OR CERTAIN BREACH OF WARRANTY LAWS TO ALLOW A DEFENDANT TO ASSERT A DEFENSE THAT THE DAMAGES WERE CAUSED BY A PERSON WITH WHOM THE CLAIMANT HAS SETTLED OR RELEASED FROM LIABILITY; REVISING PRODUCT LIABILITY LAWS TO ALLOW CERTAIN DEFENSES; PROVIDING DEFINITIONS; ALLOWING CONTRIBUTORY NEGLIGENCE AS A DEFENSE IN A PRODUCT LIABILITY LAWSUIT; ALLOWING THE SELLER OF A PRODUCT TO ASSERT CERTAIN DEFENSES; PROVIDING STANDARDS OF PROOF FOR CLAIMANTS IN CERTAIN PRODUCT ACTIONS; AMENDING SECTIONS 27-1-703 AND 27-1-719, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 27-1-703, MCA, is amended to read:

"**27-1-703. (Temporary) Multiple defendants -- determination of liability.** (1) Except as provided in subsections (2) and (3), if the negligence of a party to an action is an issue, each party against whom recovery may be allowed is jointly and severally liable for the amount that may be awarded to the claimant but has the right of contribution from any other person whose negligence may have contributed as a proximate cause to the injury complained of.

(2) A party whose negligence is determined to be 50% or less of the combined negligence of all persons described in subsection (4) is severally liable only and is responsible only for the percentage of negligence attributable to that party, except as provided in subsection (3). The remaining parties are jointly and severally liable for the total less the percentage attributable to the claimant and to any person with whom the claimant has settled or whom the plaintiff has released from liability.

(3) A party may be jointly liable for all damages caused by the negligence of another if both acted

in concert in contributing to the claimant's damages or if one party acted as an agent of the other.

(4) On motion of a party against whom a claim is asserted for negligence resulting in death or injury to person or property, any other person whose negligence may have contributed as a proximate cause to the injury complained of may be joined as an additional party to the action. For purposes of determining the percentage of liability attributable to each party whose action contributed to the injury complained of, the trier of fact shall consider the negligence of the claimant, injured person, defendants, and third-party defendants. The liability of persons released from liability by the claimant and persons with whom the claimant has settled must also be considered by the trier of fact, as provided in subsection (6). The trier of fact shall apportion the percentage of negligence of all persons listed in this subsection. Nothing contained in this section makes any party indispensable pursuant to Rule 19, Montana Rules of Civil Procedure.

(5) If for any reason all or part of the contribution from a party liable for contribution cannot be obtained, each of the other parties shall contribute a proportional part of the unpaid portion of the noncontributing party's share and may obtain judgment in a pending or subsequent action for contribution from the noncontributing party. A party found to be 50% or less negligent for the injury complained of is liable for contribution under this section only up to the percentage of negligence attributed to that party.

(6) (a) In an action based on negligence, strict liability as provided in 27-1-719(1), or on a breach of warranty, including but not limited to the provisions of 30-2-314, 30-2-315, or 30-11-215, a defendant may assert as a defense that the damages of the claimant were caused in full or in part by a person with whom the claimant has settled or whom the claimant has released from liability.

(b) In determining the percentage of liability attributable to persons who are parties to the action, the trier of fact shall consider the negligence of persons released from liability by the claimant or with whom the claimant has settled. A finding of negligence of a person with whom the claimant has settled or who has been released from liability by the claimant is not a presumptive or conclusive finding as to that person for purposes of a prior or subsequent action involving that person.

(c) Except for persons who have settled with or have been released by the claimant, comparison of fault with any of the following persons is prohibited:

(i) a person who is immune from liability to the claimant;

(ii) a person who is not subject to the jurisdiction of the court; or

(iii) any other person who could have been, but was not, named as a third party.

(d) A release of settlement entered into by a claimant constitutes an assumption of the liability, if any, allocated to the settled or released person. The claim of the releasing or settling claimant against other persons is reduced by the percentage of the released or settled person's equitable share of the obligation, as determined under subsection (4).

(e) A defendant who alleges that a person released by the claimant or with whom the claimant has settled is at fault in the matter has the burden of proving:

(i) the negligence of the person whom the claimant has released or with whom the claimant has settled;

(ii) any standard of care applicable to the person whom the claimant released or with whom the claimant settled; and

(iii) that the negligence of the person whom the claimant has released or with whom the claimant has settled was a contributing cause under the law applicable to the matter.

(f) A defendant alleging that a settled or released person is at fault in the matter shall affirmatively plead the settlement or release as a defense in the answer. A defendant who gains actual knowledge of a settled or released person after the filing of that defendant's answer may plead the defense of settlement or release with reasonable promptness, as determined by the trial court, in a manner that is consistent with:

(i) giving the defendant a reasonable opportunity to discover the existence of a settled or released person;

(ii) giving the settled or released person an opportunity to intervene in the action to defend against claims affirmatively asserted, including the opportunity to be represented by an attorney, present a defense, participate in discovery, cross-examine witnesses, and appear as a witness of either party; and

(iii) giving the claimant a reasonable opportunity to defend against the defense.

(g) If a defendant alleges that a settled or released person is at fault in the matter, the defendant shall notify each person who the defendant alleges caused the claimant's injuries, in whole or in part. Notification must be made by mailing the defendant's answer to each settled or released person at the person's last-known address by certified mail, return receipt requested. (Terminates on occurrence of contingency--sec. 11(2), Ch. 429, L. 1997.)

27-1-703. (Effective on occurrence of contingency) Multiple defendants -- determination of liability. Each party against whom recovery may be allowed is jointly and severally liable for the amount that may be awarded to the claimant but has the right of contribution from any other person whose negligence may have contributed as a proximate cause to the injury complained of."

Section 2. Section 27-1-719, MCA, is amended to read:

"**27-1-719. (Temporary) Liability of seller of product for physical harm to user or consumer.** ~~(1) As used in this section, "seller" means a manufacturer, wholesaler, or retailer.~~

~~(2)~~(1) A person who sells a product in a defective condition that is unreasonably dangerous to a user or consumer or to the property of a user or consumer is liable for physical harm caused by the product to the ultimate user or consumer or to the user's or consumer's property if:

(a) the seller is engaged in the business of selling the product; and

(b) the product is expected to and does reach the user or consumer without substantial change in the condition in which it is sold.

~~(3)~~(2) The provisions of subsection ~~(2)~~ (1) apply even if:

(a) the seller exercised all possible care in the preparation and sale of the product; and

(b) the user or consumer did not buy the product from or enter into any contractual relation with the seller.

~~(4)~~(3) (a) Subsection ~~(2)~~ (1) does not apply to product liability claims brought for damages caused in part by covid-19 as defined in 27-1-1601, which are governed by 27-1-1602.

(b) Subsection ~~(2)~~(1)(b) does not apply to a claim for relief based ~~upon~~ on improper product design.

~~(5)~~(4) ~~Except as provided in this subsection, contributory negligence is not a defense to the liability of a seller, based on strict liability in tort, for personal injury or property damage caused by a defectively manufactured or defectively designed product.~~ A seller named as a defendant in an action based on strict liability in tort for damages to person or property caused by a defectively designed or defectively manufactured product may assert the following affirmative defenses against the claimant, user, or consumer, the legal representative of the claimant, user, or consumer, or any person claiming damages by reason of injury to the

user or consumer:

(a) ~~The~~ the claimant, user, or consumer of the product discovered the defect or the defect was open and obvious and the claimant, user, or consumer unreasonably made use of the product and was injured by it~~.~~;

(b) ~~The~~ the product was unreasonably misused by the user or consumer and the misuse caused or contributed to the injury. Unreasonable misuse of the product includes use of the product in a manner that contravenes an express warning or instruction appearing on, accompanying, or attached to the product or on its original container or wrapping, if the user or consumer knew or with the exercise of reasonable and diligent care should have known of the instructions or warnings.

(c) the claimant's contributory negligence or fault, regardless of the legal basis;

(d) the negligence or fault, regardless of the legal basis, of any party to a product liability action;

(e) the negligence or fault, regardless of the legal basis, of any person or entity with whom the claimant has settled or whom the claimant has released from liability as provided in 27-1-703(6).

~~(6)~~(5) The affirmative defenses referred to in subsection ~~(5)~~ (4) mitigate or bar recovery and must be applied in accordance with the principles of comparative negligence set forth in 27-1-702.

(6) A seller named as a defendant in a product liability action may assert the following affirmative defenses against the claimant, user, or consumer, the legal representative of the claimant, user, or consumer, or any person claiming damages by reason of injury to the user or consumer:

(a) the plans or design for the product at issue or the methods and techniques of manufacturing, inspecting, testing, and labeling the product could not have been made safer by the adoption of a reasonable alternative that was available at the time the product was first sold to a user or consumer; or

(b) the product liability action was not commenced within 10 years of the date on which the product was first sold or leased to any person or otherwise placed into the stream of commerce, unless:

(i) the seller against whom the product liability action is brought knowingly concealed a defective or unsafe condition in the product that is the subject of the action or has knowingly concealed negligence in the product's construction, manufacture, or assembly, and if the matter so concealed directly resulted in the economic loss, personal injury, property damage, or wrongful death for which the action is brought;

(ii) the product is subject to a government-mandated product recall related to consumer safety,

provided that the action must be limited to the extent that the subject of the product liability action and the underlying reason for the recall are the same;

(iii) the product liability action is brought with respect to a product that is real property or an improvement to real property;

(iv) the product liability action alleges that the product has a defective condition that is unreasonably dangerous because it causes a respiratory or malignant disease with a latency of more than 10 years, and the seller against whom the product liability action is brought is also the manufacturer of the product claimed to be defective; or

(v) the seller or the person who first placed the product that is the subject of the product liability action in the stream of commerce has stated in a written warranty or an advertisement to the public that the product has an expected useful life for a period certain that is greater than 10 years, in which event any product liability action that is otherwise within this section and is not barred by any other provision of law must be brought no later than 2 years following the expiration of that period certain.

(7) In a product liability action, it is rebuttably presumed that the product that caused the injury, death, or property damage was not in a defective condition that is unreasonably dangerous and that the manufacturer or seller of the product was not negligent. The jury must be informed of this presumption if at the time the product was first sold or leased to any person or otherwise placed into the stream of commerce:

(a) the product at issue's formula, design, labeling, warning, or instructions complied with mandatory safety statutes, standards, or regulations adopted by the federal or state government or an agency of the federal or state government that were applicable to the product at issue at the time of its manufacture and that addressed the product risk that allegedly caused harm;

(b) the product at issue was subject to premarket licensing or approval by the federal or state government or an agency of the federal or state government, the seller complied with all of the government's or agency's procedures and requirements pertaining to premarketing licensing or approval, and the product was approved or licensed for sale by the government or agency; or

(c) the product at issue:

(i) was a drug or medical device;

(ii) was approved for safety and efficacy by the United States food and drug administration;

(iii) was in compliance, in addition to its labeling, with the United States food and drug administration's approval at the time the product at issue left the control of the seller; and

(iv) was not sold in the United States after the effective date of any order of the United States food and drug administration to remove the product at issue from the market or to withdraw its approval.

(8) A product liability action may not be commenced or maintained against a seller who is not also a manufacturer unless the claimant proves by a preponderance of evidence that:

(a) the seller actually exercised substantial control over some aspect of the manufacture, construction, design, formula, installation, preparation, assembly, testing, packaging, labeling, warnings, and instructions of the product that was a proximate cause of the damages for which the claimant seeks recovery;

(b) the seller altered, modified, or installed the product after it left the manufacturer's possession, and the alteration, modification, or installation was not authorized or requested by the manufacturer, was not performed in compliance with the directions or specifications of the manufacturer, and was a direct cause of the damages for which the claimant seeks recovery;

(c) the seller failed to exercise reasonable care with regard to the assembly, maintenance, service, or repair of the product at issue or in conveying to the claimant the manufacturer's labels, warnings, or instructions, and this failure was a proximate cause of the damages for which the claimant seeks recovery;

(d) the seller made an express factual representation regarding the product independent of any express warranty made by a manufacturer regarding the product, the product failed to conform to the seller's independent express warranty, the claimant relied on the express factual representation, and the failure of the product to conform to the seller's independent express warranty was a proximate cause of the damages for which the claimant seeks recovery;

(e) the manufacturer cannot be identified, despite a good-faith exercise of due diligence to identify the manufacturer of the product;

(f) personal jurisdiction over the manufacturer cannot be obtained in the state;

(g) the manufacturer has been adjudicated bankrupt and a judgment is not otherwise recoverable from the assets of the manufacturer's bankruptcy estate; or

(h) the seller had actual knowledge that the product contained a defect at the time the seller placed the product into the stream of commerce, and that known defect was a proximate cause of the damages

for which the claimant seeks recovery.

(9) As used in this section:

(a) "Claimant" means a party seeking relief, including a plaintiff, counterclaimant, or cross-claimant. When the action seeks to recover damages to or for a person who has died, the term includes the decedent as well as the party or parties bringing the action seeking relief.

(b) "Manufacturer" means a person, corporation or other legal entity that is a designer, formulator, constructor, rebuilder, fabricator, producer, compounder, processor, or assembler of any product or any component part of a product and who places the product or any component part of the product in the stream of commerce.

(c) "Product liability action" means any action brought against a manufacturer or seller of a product, regardless of the substantive legal theory or theories on which the action is brought, for or on account of personal injury, death, or property damage caused by or resulting from the manufacture, construction, design, formula, installation, preparation, assembly, testing, packaging, labeling, or sale of any product, the failure to warn or protect against a danger or hazard in the use, misuse, or unintended use of any product, or the failure to provide proper instructions for the use of any product.

(d) "Seller" means a manufacturer, wholesaler, or retailer. (Terminates on occurrence of contingency--sec. 11(2), Ch. 429, L. 1997; subsection ~~(4)~~(3)(a) terminates January 1, 2031--sec. 15, Ch. 2, L. 2021.)

27-1-719. (Effective on occurrence of contingency) Liability of seller of product for physical harm to user or consumer. ~~(1) As used in this section, "seller" means a manufacturer, wholesaler, or retailer.~~

~~(2)~~(1) A person who sells a product in a defective condition that is unreasonably dangerous to a user or consumer or to the property of a user or consumer is liable for physical harm caused by the product to the ultimate user or consumer or to the user's or consumer's property if:

(a) the seller is engaged in the business of selling the product; and

(b) the product is expected to and does reach the user or consumer without substantial change in the condition in which it is sold.

~~(3)~~(2) The provisions of subsection ~~(2)~~ (1) apply even if:

(a) the seller exercised all possible care in the preparation and sale of the product; and

(b) the user or consumer did not buy the product from or enter into any contractual relation with the seller.

~~(4)~~(3) (a) Subsection ~~(2)~~ (1) does not apply to product liability claims brought for damages caused in part by covid-19 as defined in 27-1-1601, which are governed by 27-1-1602.

(b) Subsection ~~(2)~~(1)(b) does not apply to a claim for relief based upon improper product design.

~~(5)~~(4) ~~Contributory fault is a defense to the liability of a seller, based on strict liability in tort, for personal injury or property damage caused by a defectively manufactured or defectively designed product.~~ A seller named as a defendant in an action based on strict liability in tort for damages to a person or property caused by a defectively designed or defectively manufactured product may assert the following affirmative defenses against the claimant, user, or consumer, the legal representative of the claimant, user, or consumer, or any person claiming damages by reason of injury to the user or consumer:

(a) ~~The~~ the claimant, user, or consumer of the product discovered the defect or the defect was open and obvious and the claimant, user, or consumer unreasonably made use of the product and was injured by it~~.~~;

(b) ~~The~~ the product was unreasonably misused by the user or consumer and the misuse caused or contributed to the injury. Unreasonable misuse of the product includes use of the product in a manner that contravenes an express warning or instruction appearing on, accompanying, or attached to the product or on its original container or wrapping, if the user or consumer knew or with the exercise of reasonable and diligent care should have known of the instructions or warnings.

(c) the claimant's contributory negligence or fault, regardless of the legal basis;

(d) the negligence or fault, regardless of the legal basis, of any party to a product liability action;

(e) the negligence or fault, regardless of the legal basis, of any person or entity with whom the claimant has settled or whom the claimant has released from liability as provided in 27-1-703(6).

~~(6)~~(5) The affirmative defenses referred to in subsection ~~(5)~~ (4) mitigate or bar recovery and must be applied in accordance with the principles of comparative fault set forth in 27-1-702 and 27-1-705.

(6) A seller named as a defendant in a product liability action may assert the following affirmative defenses against the claimant, user, or consumer, the legal representative of the claimant, user, or consumer, or any person claiming damages by reason of injury to the user or consumer:

(a) the plans or design for the product at issue or the methods and techniques of manufacturing, inspecting, testing, and labeling the product could not have been made safer by the adoption of a reasonable alternative that was available at the time the product was first sold to a user or consumer; or

(b) the product liability action was not commenced within 10 years of the date on which the product was first sold or leased to any person or otherwise placed into the stream of commerce, unless:

(i) the seller against whom the product liability action is brought knowingly concealed a defective or unsafe condition in the product that is the subject of the action or has knowingly concealed negligence in the product's construction, manufacture, or assembly, and if the matter so concealed directly resulted in the economic loss, personal injury, property damage, or wrongful death for which the action is brought;

(ii) the product is subject to a government-mandated product recall related to consumer safety, provided that the action must be limited to the extent that the subject of the product liability action and the underlying reason for the recall are the same;

(iii) the product liability action is brought with respect to a product that is real property or an improvement to real property;

(iv) the product liability action alleges that the product has a defective condition that is unreasonably dangerous because it causes a respiratory or malignant disease with a latency of more than 10 years, and the seller against whom the product liability action is brought is also the manufacturer of the product claimed to be defective; or

(v) the seller or the person who first placed the product that is the subject of the product liability action in the stream of commerce has stated in a written warranty or an advertisement to the public that the product has an expected useful life for a period certain that is greater than 10 years, in which event any product liability action that is otherwise within this section and is not barred by any other provision of law must be brought no later than 2 years following the expiration of that period certain.

(7) In a product liability action, it is rebuttably presumed that the product that caused the injury, death, or property damage was not in a defective condition that is unreasonably dangerous and that the manufacturer or seller of the product was not negligent. The jury must be informed of this presumption if at the time the product was first sold or leased to any person or otherwise placed into the stream of commerce:

(a) the product at issue's formula, design, labeling, warning, or instructions complied with

mandatory safety statutes, standards, or regulations adopted by the federal or state government or an agency of the federal or state government that were applicable to the product at issue at the time of its manufacture and that addressed the product risk that allegedly caused harm;

(b) the product at issue was subject to premarket licensing or approval by the federal or state government or an agency of the federal or state government, the seller complied with all of the government's or agency's procedures and requirements pertaining to premarketing licensing or approval, and the product was approved or licensed for sale by the government or agency; or

(c) the product at issue:

(i) was a drug or medical device;

(ii) was approved for safety and efficacy by the United States food and drug administration;

(iii) was in compliance, in addition to its labeling, with the United States food and drug administration's approval at the time the product at issue left the control of the seller; and

(iv) was not sold in the United States after the effective date of any order of the United States food and drug administration to remove the product at issue from the market or to withdraw its approval.

(8) A product liability action may not be commenced or maintained against a seller who is not also a manufacturer unless the claimant proves by a preponderance of evidence that:

(a) the seller actually exercised substantial control over some aspect of the manufacture, construction, design, formula, installation, preparation, assembly, testing, packaging, labeling, warnings, and instructions of the product that was a proximate cause of the damages for which the claimant seeks recovery;

(b) the seller altered, modified, or installed the product after it left the manufacturer's possession, and the alteration, modification, or installation was not authorized or requested by the manufacturer, was not performed in compliance with the directions or specifications of the manufacturer, and was a direct cause of the damages for which the claimant seeks recovery;

(c) the seller failed to exercise reasonable care with regard to the assembly, maintenance, service, or repair of the product at issue or in conveying to the claimant the manufacturer's labels, warnings, or instructions, and this failure was a proximate cause of the damages for which the claimant seeks recovery;

(d) the seller made an express factual representation regarding the product independent of any express warranty made by a manufacturer regarding the product, the product failed to conform to the seller's

independent express warranty, the claimant relied on the express factual representation, and the failure of the product to conform to the seller's independent express warranty was a proximate cause of the damages for which the claimant seeks recovery;

(e) the manufacturer cannot be identified, despite a good-faith exercise of due diligence to identify the manufacturer of the product;

(f) personal jurisdiction over the manufacturer cannot be obtained in the state;

(g) the manufacturer has been adjudicated bankrupt and a judgment is not otherwise recoverable from the assets of the manufacturer's bankruptcy estate; or

(h) the seller had actual knowledge that the product contained a defect at the time the seller placed the product into the stream of commerce, and that known defect was a proximate cause of the damages for which the claimant seeks recovery.

(9) As used in this section:

(a) "Claimant" means a party seeking relief, including a plaintiff, counterclaimant, or cross-claimant. When the action seeks to recover damages to or for a person who has died, the term includes the decedent as well as the party or parties bringing the action seeking relief.

(b) "Manufacturer" means a person, corporation, or other legal entity that is a designer, formulator, constructor, rebuilder, fabricator, producer, compounder, processor, or assembler of any product or any component part of a product and who places the product or any component part of the product in the stream of commerce.

(c) "Product liability action" means any action brought against a manufacturer or seller of a product, regardless of the substantive legal theory or theories on which the action is brought, for or on account of personal injury, death, or property damage caused by or resulting from the manufacture, construction, design, formula, installation, preparation, assembly, testing, packaging, labeling, or sale of any product, the failure to warn or protect against a danger or hazard in the use, misuse, or unintended use of any product, or the failure to provide proper instructions for the use of any product.

(d) "Seller" means a manufacturer, wholesaler, or retailer. (Subsection ~~(4)~~(3)(a) terminates January 1, 2031--sec. 15, Ch. 2, L. 2021.)"

Section 3. Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 4. Effective date. [This act] is effective on passage and approval.

Section 5. Applicability. [This act] applies to claims that accrue on or after [the effective date of this act].

- END -

I hereby certify that the within bill,

SB 216, originated in the Senate.

_____

Secretary of the Senate

_____

President of the Senate

Signed this _____day

of_____, 2023.

_____

Speaker of the House

Signed this _____day

of_____, 2023.

SENATE BILL NO. 216

INTRODUCED BY S. FITZPATRICK

AN ACT REVISING LAWS RELATING TO CIVIL LAWSUITS INVOLVING PRODUCTS; REVISING LAWS PERTAINING TO STRICT LIABILITY OR CERTAIN BREACH OF WARRANTY LAWS TO ALLOW A DEFENDANT TO ASSERT A DEFENSE THAT THE DAMAGES WERE CAUSED BY A PERSON WITH WHOM THE CLAIMANT HAS SETTLED OR RELEASED FROM LIABILITY; REVISING PRODUCT LIABILITY LAWS TO ALLOW CERTAIN DEFENSES; PROVIDING DEFINITIONS; ALLOWING CONTRIBUTORY NEGLIGENCE AS A DEFENSE IN A PRODUCT LIABILITY LAWSUIT; ALLOWING THE SELLER OF A PRODUCT TO ASSERT CERTAIN DEFENSES; PROVIDING STANDARDS OF PROOF FOR CLAIMANTS IN CERTAIN PRODUCT ACTIONS; AMENDING SECTIONS 27-1-703 AND 27-1-719, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE.

SENATE BILL NO. 216

INTRODUCED BY S. FITZPATRICK

A BILL FOR AN ACT ENTITLED: “AN ACT REVISING LAWS RELATING TO CIVIL LAWSUITS INVOLVING PRODUCTS; REVISING LAWS PERTAINING TO STRICT LIABILITY OR CERTAIN BREACH OF WARRANTY LAWS TO ALLOW A DEFENDANT TO ASSERT A DEFENSE THAT THE DAMAGES WERE CAUSED BY A PERSON WITH WHOM THE CLAIMANT HAS SETTLED OR RELEASED FROM LIABILITY; REVISING PRODUCT LIABILITY LAWS TO ALLOW CERTAIN DEFENSES; PROVIDING DEFINITIONS; ALLOWING CONTRIBUTORY NEGLIGENCE AS A DEFENSE IN A PRODUCT LIABILITY LAWSUIT; ALLOWING THE SELLER OF A PRODUCT TO ASSERT CERTAIN DEFENSES; PROVIDING STANDARDS OF PROOF FOR CLAIMANTS IN CERTAIN PRODUCT ACTIONS; AMENDING SECTIONS 27-1-703 AND 27-1-719, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE.”

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 27-1-703, MCA, is amended to read:

"**27-1-703. (Temporary) Multiple defendants -- determination of liability.** (1) Except as provided in subsections (2) and (3), if the negligence of a party to an action is an issue, each party against whom recovery may be allowed is jointly and severally liable for the amount that may be awarded to the claimant but has the right of contribution from any other person whose negligence may have contributed as a proximate cause to the injury complained of.

(2) A party whose negligence is determined to be 50% or less of the combined negligence of all persons described in subsection (4) is severally liable only and is responsible only for the percentage of negligence attributable to that party, except as provided in subsection (3). The remaining parties are jointly and severally liable for the total less the percentage attributable to the claimant and to any person with whom the claimant has settled or whom the plaintiff has released from liability.

(3) A party may be jointly liable for all damages caused by the negligence of another if both acted in concert in contributing to the claimant's damages or if one party acted as an agent of the other.

(4) On motion of a party against whom a claim is asserted for negligence resulting in death or injury to person or property, any other person whose negligence may have contributed as a proximate cause to the injury complained of may be joined as an additional party to the action. For purposes of determining the percentage of liability attributable to each party whose action contributed to the injury complained of, the trier of fact shall consider the negligence of the claimant, injured person, defendants, and third-party defendants. The liability of persons released from liability by the claimant and persons with whom the claimant has settled must also be considered by the trier of fact, as provided in subsection (6). The trier of fact shall apportion the percentage of negligence of all persons listed in this subsection. Nothing contained in this section makes any party indispensable pursuant to Rule 19, Montana Rules of Civil Procedure.

(5) If for any reason all or part of the contribution from a party liable for contribution cannot be obtained, each of the other parties shall contribute a proportional part of the unpaid portion of the noncontributing party's share and may obtain judgment in a pending or subsequent action for contribution from the noncontributing party. A party found to be 50% or less negligent for the injury complained of is liable for contribution under this section only up to the percentage of negligence attributed to that party.

(6) (a) In an action based on negligence, strict liability as provided in 27-1-719(1), or on a breach of warranty, including but not limited to the provisions of 30-2-314, 30-2-315, or 30-11-215, a defendant may assert as a defense that the damages of the claimant were caused in full or in part by a person with whom the claimant has settled or whom the claimant has released from liability.

(b) In determining the percentage of liability attributable to persons who are parties to the action, the trier of fact shall consider the negligence of persons released from liability by the claimant or with whom the claimant has settled. A finding of negligence of a person with whom the claimant has settled or who has been released from liability by the claimant is not a presumptive or conclusive finding as to that person for purposes of a prior or subsequent action involving that person.

(c) Except for persons who have settled with or have been released by the claimant, comparison of fault with any of the following persons is prohibited:

(i) a person who is immune from liability to the claimant;

(ii) a person who is not subject to the jurisdiction of the court; or

(iii) any other person who could have been, but was not, named as a third party.

(d) A release of settlement entered into by a claimant constitutes an assumption of the liability, if any, allocated to the settled or released person. The claim of the releasing or settling claimant against other persons is reduced by the percentage of the released or settled person's equitable share of the obligation, as determined under subsection (4).

(e) A defendant who alleges that a person released by the claimant or with whom the claimant has settled is at fault in the matter has the burden of proving:

(i) the negligence of the person whom the claimant has released or with whom the claimant has settled;

(ii) any standard of care applicable to the person whom the claimant released or with whom the claimant settled; and

(iii) that the negligence of the person whom the claimant has released or with whom the claimant has settled was a contributing cause under the law applicable to the matter.

(f) A defendant alleging that a settled or released person is at fault in the matter shall affirmatively plead the settlement or release as a defense in the answer. A defendant who gains actual knowledge of a settled or released person after the filing of that defendant's answer may plead the defense of settlement or release with reasonable promptness, as determined by the trial court, in a manner that is consistent with:

(i) giving the defendant a reasonable opportunity to discover the existence of a settled or released person;

(ii) giving the settled or released person an opportunity to intervene in the action to defend against claims affirmatively asserted, including the opportunity to be represented by an attorney, present a defense, participate in discovery, cross-examine witnesses, and appear as a witness of either party; and

(iii) giving the claimant a reasonable opportunity to defend against the defense.

(g) If a defendant alleges that a settled or released person is at fault in the matter, the defendant shall notify each person who the defendant alleges caused the claimant's injuries, in whole or in part. Notification must be made by mailing the defendant's answer to each settled or released person at the person's last-known address by certified mail, return receipt requested. (Terminates on occurrence of contingency--sec. 11(2), Ch. 429, L. 1997.)

27-1-703. (Effective on occurrence of contingency) Multiple defendants -- determination of

liability. Each party against whom recovery may be allowed is jointly and severally liable for the amount that may be awarded to the claimant but has the right of contribution from any other person whose negligence may have contributed as a proximate cause to the injury complained of."

Section 2. Section 27-1-719, MCA, is amended to read:

"**27-1-719. (Temporary) Liability of seller of product for physical harm to user or consumer.** ~~(1) As used in this section, "seller" means a manufacturer, wholesaler, or retailer.~~

~~(2)~~(1) A person who sells a product in a defective condition that is unreasonably dangerous to a user or consumer or to the property of a user or consumer is liable for physical harm caused by the product to the ultimate user or consumer or to the user's or consumer's property if:

(a) the seller is engaged in the business of selling the product; and

(b) the product is expected to and does reach the user or consumer without substantial change in the condition in which it is sold.

~~(3)~~(2) The provisions of subsection ~~(2)~~ (1) apply even if:

(a) the seller exercised all possible care in the preparation and sale of the product; and

(b) the user or consumer did not buy the product from or enter into any contractual relation with the seller.

~~(4)~~(3) (a) Subsection ~~(2)~~ (1) does not apply to product liability claims brought for damages caused in part by covid-19 as defined in 27-1-1601, which are governed by 27-1-1602.

(b) Subsection ~~(2)~~(1)(b) does not apply to a claim for relief based ~~upon~~ on improper product design.

~~(5)~~(4) ~~Except as provided in this subsection, contributory negligence is not a defense to the liability of a seller, based on strict liability in tort, for personal injury or property damage caused by a defectively manufactured or defectively designed product.~~ A seller named as a defendant in an action based on strict liability in tort for damages to person or property caused by a defectively designed or defectively manufactured product may assert the following affirmative defenses against the claimant, user, or consumer, the legal representative of the claimant, user, or consumer, or any person claiming damages by reason of injury to the user or consumer:

(a) ~~The~~ the claimant, user, or consumer of the product discovered the defect or the defect was open and obvious and the claimant, user, or consumer unreasonably made use of the product and was injured by it~~.~~;

(b) ~~The~~ the product was unreasonably misused by the user or consumer and the misuse caused or contributed to the injury. Unreasonable misuse of the product includes use of the product in a manner that contravenes an express warning or instruction appearing on, accompanying, or attached to the product or on its original container or wrapping, if the user or consumer knew or with the exercise of reasonable and diligent care should have known of the instructions or warnings.

(c) the claimant's contributory negligence or fault, regardless of the legal basis;

(d) the negligence or fault, regardless of the legal basis, of any party to a product liability action;

(e) the negligence or fault, regardless of the legal basis, of any person or entity with whom the claimant has settled or whom the claimant has released from liability as provided in 27-1-703(6).

~~(6)~~(5) The affirmative defenses referred to in subsection ~~(5)~~ (4) mitigate or bar recovery and must be applied in accordance with the principles of comparative negligence set forth in 27-1-702.

(6) A seller named as a defendant in a product liability action may assert the following affirmative defenses against the claimant, user, or consumer, the legal representative of the claimant, user, or consumer, or any person claiming damages by reason of injury to the user or consumer:

(a) the plans or design for the product at issue or the methods and techniques of manufacturing, inspecting, testing, and labeling the product could not have been made safer by the adoption of a reasonable alternative that was available at the time the product was first sold to a user or consumer; OR

(b) the product liability action was not commenced within 10 years of the date on which the product was first sold or leased to any person or otherwise placed into the stream of commerce, unless:

(i) the seller against whom the product liability action is brought knowingly concealed a defective or unsafe condition in the product that is the subject of the action or has knowingly concealed negligence in the product's construction, manufacture, or assembly, and if the matter so concealed directly resulted in the economic loss, personal injury, property damage, or wrongful death for which the action is brought;

(ii) the product is subject to a government-mandated product recall related to consumer safety, provided that the action must be limited to the extent that the subject of the product liability action and the

underlying reason for the recall are the same;

(iii) the product liability action is brought with respect to a product that is real property or an improvement to real property;

(iv) the product liability action alleges that the product has a defective condition that is unreasonably dangerous because it causes a respiratory or malignant disease with a latency of more than 10 years, and the seller against whom the product liability action is brought is also the manufacturer of the product claimed to be defective; or

(v) the seller or the person who first placed the product that is the subject of the product liability action in the stream of commerce has stated in a written warranty or an advertisement to the public that the product has an expected useful life for a period certain that is greater than 10 years, in which event any product liability action that is otherwise within this section and is not barred by any other provision of law must be brought no later than 2 years following the expiration of that period certain~~;~~.

(7) IN A PRODUCT LIABILITY ACTION, IT IS REBUTTABLY PRESUMED THAT THE PRODUCT THAT CAUSED THE INJURY, DEATH, OR PROPERTY DAMAGE WAS NOT IN A DEFECTIVE CONDITION THAT IS UNREASONABLY DANGEROUS AND THAT THE MANUFACTURER OR SELLER OF THE PRODUCT WAS NOT NEGLIGENT. THE JURY MUST BE INFORMED OF THIS PRESUMPTION IF

~~(c)~~ at the time the product was first sold or leased to any person or otherwise placed into the stream of commerce:

~~(i)~~(A) the product at issue's formula, design, labeling, warning, or instructions complied with mandatory safety statutes, standards, or regulations adopted by the federal or state government or an agency of the federal or state government that were applicable to the product at issue at the time of its manufacture and that addressed the product risk that allegedly caused harm;

~~(ii)~~(B) the product at issue was subject to premarket licensing or approval by the federal or state government or an agency of the federal or state government, the seller complied with all of the government's or agency's procedures and requirements pertaining to premarketing licensing or approval, and the product was approved or licensed for sale by the government or agency; or

~~(iii)~~(C) the product at issue:

~~(A)~~(I) was a drug or medical device;

~~(B)~~(II) was approved for safety and efficacy by the United States food and drug administration;

~~(C)~~(III) was in compliance, in addition to its labeling, with the United States food and drug administration's approval at the time the product at issue left the control of the seller; and

~~(D)~~(IV) was not sold in the United States after the effective date of any order of the United States food and drug administration to remove the product at issue from the market or to withdraw its approval.

~~(7)~~(8) A product liability action may not be commenced or maintained against a seller who is not also a manufacturer unless the claimant proves by a preponderance of evidence that:

(a) the seller actually exercised substantial control over some aspect of the manufacture, construction, design, formula, installation, preparation, assembly, testing, packaging, labeling, warnings, and instructions of the product that was a proximate cause of the damages for which the claimant seeks recovery;

(b) the seller altered, modified, or installed the product after it left the manufacturer's possession, and the alteration, modification, or installation was not authorized or requested by the manufacturer, was not performed in compliance with the directions or specifications of the manufacturer, and was a direct cause of the damages for which the claimant seeks recovery;

(c) the seller failed to exercise reasonable care with regard to the assembly, maintenance, service, or repair of the product at issue or in conveying to the claimant the manufacturer's labels, warnings, or instructions, and this failure was a proximate cause of the damages for which the claimant seeks recovery;

(d) the seller made an express factual representation regarding the product independent of any express warranty made by a manufacturer regarding the product, the product failed to conform to the seller's independent express warranty, the claimant relied on the express factual representation, and the failure of the product to conform to the seller's independent express warranty was a proximate cause of the damages for which the claimant seeks recovery;

(e) the manufacturer cannot be identified, despite a good-faith exercise of due diligence to identify the manufacturer of the product;

(f) personal jurisdiction over the manufacturer cannot be obtained in the state;

(g) the manufacturer has been adjudicated bankrupt and a judgment is not otherwise recoverable from the assets of the manufacturer's bankruptcy estate; or

(h) the seller had actual knowledge that the product contained a defect at the time the seller

placed the product into the stream of commerce, and that known defect was a proximate cause of the damages for which the claimant seeks recovery.

~~(8)~~(9) As used in this section:

(a) "Claimant" means a party seeking relief, including a plaintiff, counterclaimant, or cross-claimant. When the action seeks to recover damages to or for a person who has died, the term includes the decedent as well as the party or parties bringing the action seeking relief.

(b) "Manufacturer" means a person, corporation or other legal entity that is a designer, formulator, constructor, rebuilder, fabricator, producer, compounder, processor, or assembler of any product or any component part of a product and who places the product or any component part of the product in the stream of commerce.

(c) "Product liability action" means any action brought against a manufacturer or seller of a product, regardless of the substantive legal theory or theories on which the action is brought, for or on account of personal injury, death, or property damage caused by or resulting from the manufacture, construction, design, formula, installation, preparation, assembly, testing, packaging, labeling, or sale of any product, the failure to warn or protect against a danger or hazard in the use, misuse, or unintended use of any product, or the failure to provide proper instructions for the use of any product.

(d) "Seller" means a manufacturer, wholesaler, or retailer. (Terminates on occurrence of contingency--sec. 11(2), Ch. 429, L. 1997; subsection ~~(4)~~(3)(a) terminates January 1, 2031--sec. 15, Ch. 2, L. 2021.)

27-1-719. (Effective on occurrence of contingency) Liability of seller of product for physical harm to user or consumer. ~~(1) As used in this section, "seller" means a manufacturer, wholesaler, or retailer.~~

~~(2)~~(1) A person who sells a product in a defective condition that is unreasonably dangerous to a user or consumer or to the property of a user or consumer is liable for physical harm caused by the product to the ultimate user or consumer or to the user's or consumer's property if:

(a) the seller is engaged in the business of selling the product; and

(b) the product is expected to and does reach the user or consumer without substantial change in the condition in which it is sold.

~~(3)~~(2) The provisions of subsection ~~(2)~~ (1) apply even if:

(a) the seller exercised all possible care in the preparation and sale of the product; and

(b) the user or consumer did not buy the product from or enter into any contractual relation with the seller.

~~(4)~~(3) (a) Subsection ~~(2)~~ (1) does not apply to product liability claims brought for damages caused in part by covid-19 as defined in 27-1-1601, which are governed by 27-1-1602.

(b) Subsection ~~(2)~~(1)(b) does not apply to a claim for relief based upon improper product design.

~~(5)~~(4) ~~Contributory fault is a defense to the liability of a seller, based on strict liability in tort, for personal injury or property damage caused by a defectively manufactured or defectively designed product.~~ A seller named as a defendant in an action based on strict liability in tort for damages to a person or property caused by a defectively designed or defectively manufactured product may assert the following affirmative defenses against the claimant, user, or consumer, the legal representative of the claimant, user, or consumer, or any person claiming damages by reason of injury to the user or consumer:

(a) ~~The~~ the claimant, user, or consumer of the product discovered the defect or the defect was open and obvious and the claimant, user, or consumer unreasonably made use of the product and was injured by it~~.~~;

(b) ~~The~~ the product was unreasonably misused by the user or consumer and the misuse caused or contributed to the injury. Unreasonable misuse of the product includes use of the product in a manner that contravenes an express warning or instruction appearing on, accompanying, or attached to the product or on its original container or wrapping, if the user or consumer knew or with the exercise of reasonable and diligent care should have known of the instructions or warnings.

(c) the claimant's contributory negligence or fault, regardless of the legal basis;

(d) the negligence or fault, regardless of the legal basis, of any party to a product liability action;

(e) the negligence or fault, regardless of the legal basis, of any person or entity with whom the claimant has settled or whom the claimant has released from liability as provided in 27-1-703(6).

~~(6)~~(5) The affirmative defenses referred to in subsection ~~(5)~~ (4) mitigate or bar recovery and must be applied in accordance with the principles of comparative fault set forth in 27-1-702 and 27-1-705.

(6) A seller named as a defendant in a product liability action may assert the following affirmative defenses against the claimant, user, or consumer, the legal representative of the claimant, user, or consumer,

or any person claiming damages by reason of injury to the user or consumer:

(a) the plans or design for the product at issue or the methods and techniques of manufacturing, inspecting, testing, and labeling the product could not have been made safer by the adoption of a reasonable alternative that was available at the time the product was first sold to a user or consumer; OR

(b) the product liability action was not commenced within 10 years of the date on which the product was first sold or leased to any person or otherwise placed into the stream of commerce, unless:

(i) the seller against whom the product liability action is brought knowingly concealed a defective or unsafe condition in the product that is the subject of the action or has knowingly concealed negligence in the product's construction, manufacture, or assembly, and if the matter so concealed directly resulted in the economic loss, personal injury, property damage, or wrongful death for which the action is brought;

(ii) the product is subject to a government-mandated product recall related to consumer safety, provided that the action must be limited to the extent that the subject of the product liability action and the underlying reason for the recall are the same;

(iii) the product liability action is brought with respect to a product that is real property or an improvement to real property;

(iv) the product liability action alleges that the product has a defective condition that is unreasonably dangerous because it causes a respiratory or malignant disease with a latency of more than 10 years, and the seller against whom the product liability action is brought is also the manufacturer of the product claimed to be defective; or

(v) the seller or the person who first placed the product that is the subject of the product liability action in the stream of commerce has stated in a written warranty or an advertisement to the public that the product has an expected useful life for a period certain that is greater than 10 years, in which event any product liability action that is otherwise within this section and is not barred by any other provision of law must be brought no later than 2 years following the expiration of that period certain~~;~~.

(7) IN A PRODUCT LIABILITY ACTION, IT IS REBUTTABLY PRESUMED THAT THE PRODUCT THAT CAUSED THE INJURY, DEATH, OR PROPERTY DAMAGE WAS NOT IN A DEFECTIVE CONDITION THAT IS UNREASONABLY DANGEROUS AND THAT THE MANUFACTURER OR SELLER OF THE PRODUCT WAS NOT NEGLIGENT. THE JURY MUST BE INFORMED OF THIS PRESUMPTION IF

~~(c)~~ at the time the product was first sold or leased to any person or otherwise placed into the stream of commerce:

~~(i)~~(A) the product at issue's formula, design, labeling, warning, or instructions complied with mandatory safety statutes, standards, or regulations adopted by the federal or state government or an agency of the federal or state government that were applicable to the product at issue at the time of its manufacture and that addressed the product risk that allegedly caused harm;

~~(ii)~~(B) the product at issue was subject to premarket licensing or approval by the federal or state government or an agency of the federal or state government, the seller complied with all of the government's or agency's procedures and requirements pertaining to premarketing licensing or approval, and the product was approved or licensed for sale by the government or agency; or

~~(iii)~~(C) the product at issue:

~~(A)~~(I) was a drug or medical device;

~~(B)~~(II) was approved for safety and efficacy by the United States food and drug administration;

~~(C)~~(III) was in compliance, in addition to its labeling, with the United States food and drug administration's approval at the time the product at issue left the control of the seller; and

~~(D)~~(IV) was not sold in the United States after the effective date of any order of the United States food and drug administration to remove the product at issue from the market or to withdraw its approval.

~~(7)~~(8) A product liability action may not be commenced or maintained against a seller who is not also a manufacturer unless the claimant proves by a preponderance of evidence that:

(a) the seller actually exercised substantial control over some aspect of the manufacture, construction, design, formula, installation, preparation, assembly, testing, packaging, labeling, warnings, and instructions of the product that was a proximate cause of the damages for which the claimant seeks recovery;

(b) the seller altered, modified, or installed the product after it left the manufacturer's possession, and the alteration, modification, or installation was not authorized or requested by the manufacturer, was not performed in compliance with the directions or specifications of the manufacturer, and was a direct cause of the damages for which the claimant seeks recovery;

(c) the seller failed to exercise reasonable care with regard to the assembly, maintenance, service, or repair of the product at issue or in conveying to the claimant the manufacturer's labels, warnings, or

instructions, and this failure was a proximate cause of the damages for which the claimant seeks recovery;

(d) the seller made an express factual representation regarding the product independent of any express warranty made by a manufacturer regarding the product, the product failed to conform to the seller's independent express warranty, the claimant relied on the express factual representation, and the failure of the product to conform to the seller's independent express warranty was a proximate cause of the damages for which the claimant seeks recovery;

(e) the manufacturer cannot be identified, despite a good-faith exercise of due diligence to identify the manufacturer of the product;

(f) personal jurisdiction over the manufacturer cannot be obtained in the state;

(g) the manufacturer has been adjudicated bankrupt and a judgment is not otherwise recoverable from the assets of the manufacturer's bankruptcy estate; or

(h) the seller had actual knowledge that the product contained a defect at the time the seller placed the product into the stream of commerce, and that known defect was a proximate cause of the damages for which the claimant seeks recovery.

~~(8)~~(9) As used in this section:

(a) "Claimant" means a party seeking relief, including a plaintiff, counterclaimant, or cross-claimant. When the action seeks to recover damages to or for a person who has died, the term includes the decedent as well as the party or parties bringing the action seeking relief.

(b) "Manufacturer" means a person, corporation, or other legal entity that is a designer, formulator, constructor, rebuilder, fabricator, producer, compounder, processor, or assembler of any product or any component part of a product and who places the product or any component part of the product in the stream of commerce.

(c) "Product liability action" means any action brought against a manufacturer or seller of a product, regardless of the substantive legal theory or theories on which the action is brought, for or on account of personal injury, death, or property damage caused by or resulting from the manufacture, construction, design, formula, installation, preparation, assembly, testing, packaging, labeling, or sale of any product, the failure to warn or protect against a danger or hazard in the use, misuse, or unintended use of any product, or the failure to provide proper instructions for the use of any product.

(d) "Seller" means a manufacturer, wholesaler, or retailer. (Subsection ~~(4)~~(3)(a) terminates January 1, 2031--sec. 15, Ch. 2, L. 2021.)"

NEW SECTION. **Section 3. Severability.** If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

NEW SECTION. **Section 4. Effective date.** [This act] is effective on passage and approval.

NEW SECTION. **Section 5. Applicability.** [This act] applies to claims that accrue on or after [the effective date of this act].

- END -

SENATE BILL NO. 216

INTRODUCED BY S. FITZPATRICK

A BILL FOR AN ACT ENTITLED: “AN ACT REVISING LAWS RELATING TO CIVIL LAWSUITS INVOLVING PRODUCTS; REVISING LAWS PERTAINING TO STRICT LIABILITY OR CERTAIN BREACH OF WARRANTY LAWS TO ALLOW A DEFENDANT TO ASSERT A DEFENSE THAT THE DAMAGES WERE CAUSED BY A PERSON WITH WHOM THE CLAIMANT HAS SETTLED OR RELEASED FROM LIABILITY; REVISING PRODUCT LIABILITY LAWS TO ALLOW CERTAIN DEFENSES; PROVIDING DEFINITIONS; ALLOWING CONTRIBUTORY NEGLIGENCE AS A DEFENSE IN A PRODUCT LIABILITY LAWSUIT; ALLOWING THE SELLER OF A PRODUCT TO ASSERT CERTAIN DEFENSES; PROVIDING STANDARDS OF PROOF FOR CLAIMANTS IN CERTAIN PRODUCT ACTIONS; AMENDING SECTIONS 27-1-703 AND 27-1-719, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE.”

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 27-1-703, MCA, is amended to read:

"**27-1-703. (Temporary) Multiple defendants -- determination of liability.** (1) Except as provided in subsections (2) and (3), if the negligence of a party to an action is an issue, each party against whom recovery may be allowed is jointly and severally liable for the amount that may be awarded to the claimant but has the right of contribution from any other person whose negligence may have contributed as a proximate cause to the injury complained of.

(2) A party whose negligence is determined to be 50% or less of the combined negligence of all persons described in subsection (4) is severally liable only and is responsible only for the percentage of negligence attributable to that party, except as provided in subsection (3). The remaining parties are jointly and severally liable for the total less the percentage attributable to the claimant and to any person with whom the claimant has settled or whom the plaintiff has released from liability.

(3) A party may be jointly liable for all damages caused by the negligence of another if both acted in concert in contributing to the claimant's damages or if one party acted as an agent of the other.

(4) On motion of a party against whom a claim is asserted for negligence resulting in death or injury to person or property, any other person whose negligence may have contributed as a proximate cause to the injury complained of may be joined as an additional party to the action. For purposes of determining the percentage of liability attributable to each party whose action contributed to the injury complained of, the trier of fact shall consider the negligence of the claimant, injured person, defendants, and third-party defendants. The liability of persons released from liability by the claimant and persons with whom the claimant has settled must also be considered by the trier of fact, as provided in subsection (6). The trier of fact shall apportion the percentage of negligence of all persons listed in this subsection. Nothing contained in this section makes any party indispensable pursuant to Rule 19, Montana Rules of Civil Procedure.

(5) If for any reason all or part of the contribution from a party liable for contribution cannot be obtained, each of the other parties shall contribute a proportional part of the unpaid portion of the noncontributing party's share and may obtain judgment in a pending or subsequent action for contribution from the noncontributing party. A party found to be 50% or less negligent for the injury complained of is liable for contribution under this section only up to the percentage of negligence attributed to that party.

(6) (a) In an action based on negligence, strict liability as provided in 27-1-719(1), or on a breach of warranty, including but not limited to the provisions of 30-2-314, 30-2-315, or 30-11-215, a defendant may assert as a defense that the damages of the claimant were caused in full or in part by a person with whom the claimant has settled or whom the claimant has released from liability.

(b) In determining the percentage of liability attributable to persons who are parties to the action, the trier of fact shall consider the negligence of persons released from liability by the claimant or with whom the claimant has settled. A finding of negligence of a person with whom the claimant has settled or who has been released from liability by the claimant is not a presumptive or conclusive finding as to that person for purposes of a prior or subsequent action involving that person.

(c) Except for persons who have settled with or have been released by the claimant, comparison of fault with any of the following persons is prohibited:

(i) a person who is immune from liability to the claimant;

(ii) a person who is not subject to the jurisdiction of the court; or

(iii) any other person who could have been, but was not, named as a third party.

(d) A release of settlement entered into by a claimant constitutes an assumption of the liability, if any, allocated to the settled or released person. The claim of the releasing or settling claimant against other persons is reduced by the percentage of the released or settled person's equitable share of the obligation, as determined under subsection (4).

(e) A defendant who alleges that a person released by the claimant or with whom the claimant has settled is at fault in the matter has the burden of proving:

(i) the negligence of the person whom the claimant has released or with whom the claimant has settled;

(ii) any standard of care applicable to the person whom the claimant released or with whom the claimant settled; and

(iii) that the negligence of the person whom the claimant has released or with whom the claimant has settled was a contributing cause under the law applicable to the matter.

(f) A defendant alleging that a settled or released person is at fault in the matter shall affirmatively plead the settlement or release as a defense in the answer. A defendant who gains actual knowledge of a settled or released person after the filing of that defendant's answer may plead the defense of settlement or release with reasonable promptness, as determined by the trial court, in a manner that is consistent with:

(i) giving the defendant a reasonable opportunity to discover the existence of a settled or released person;

(ii) giving the settled or released person an opportunity to intervene in the action to defend against claims affirmatively asserted, including the opportunity to be represented by an attorney, present a defense, participate in discovery, cross-examine witnesses, and appear as a witness of either party; and

(iii) giving the claimant a reasonable opportunity to defend against the defense.

(g) If a defendant alleges that a settled or released person is at fault in the matter, the defendant shall notify each person who the defendant alleges caused the claimant's injuries, in whole or in part. Notification must be made by mailing the defendant's answer to each settled or released person at the person's last-known address by certified mail, return receipt requested. (Terminates on occurrence of contingency--sec. 11(2), Ch. 429, L. 1997.)

27-1-703. (Effective on occurrence of contingency) Multiple defendants -- determination of

liability. Each party against whom recovery may be allowed is jointly and severally liable for the amount that may be awarded to the claimant but has the right of contribution from any other person whose negligence may have contributed as a proximate cause to the injury complained of."

Section 2. Section 27-1-719, MCA, is amended to read:

"**27-1-719. (Temporary) Liability of seller of product for physical harm to user or consumer.** ~~(1) As used in this section, "seller" means a manufacturer, wholesaler, or retailer.~~

~~(2)~~(1) A person who sells a product in a defective condition that is unreasonably dangerous to a user or consumer or to the property of a user or consumer is liable for physical harm caused by the product to the ultimate user or consumer or to the user's or consumer's property if:

(a) the seller is engaged in the business of selling the product; and

(b) the product is expected to and does reach the user or consumer without substantial change in the condition in which it is sold.

~~(3)~~(2) The provisions of subsection ~~(2)~~ (1) apply even if:

(a) the seller exercised all possible care in the preparation and sale of the product; and

(b) the user or consumer did not buy the product from or enter into any contractual relation with the seller.

~~(4)~~(3) (a) Subsection ~~(2)~~ (1) does not apply to product liability claims brought for damages caused in part by covid-19 as defined in 27-1-1601, which are governed by 27-1-1602.

(b) Subsection ~~(2)~~(1)(b) does not apply to a claim for relief based ~~upon~~ on improper product design.

~~(5)~~(4) ~~Except as provided in this subsection, contributory negligence is not a defense to the liability of a seller, based on strict liability in tort, for personal injury or property damage caused by a defectively manufactured or defectively designed product.~~ A seller named as a defendant in an action based on strict liability in tort for damages to person or property caused by a defectively designed or defectively manufactured product may assert the following affirmative defenses against the claimant, user, or consumer, the legal representative of the claimant, user, or consumer, or any person claiming damages by reason of injury to the user or consumer:

(a) ~~The~~ the claimant, user, or consumer of the product discovered the defect or the defect was open and obvious and the claimant, user, or consumer unreasonably made use of the product and was injured by it~~.~~;

(b) ~~The~~ the product was unreasonably misused by the user or consumer and the misuse caused or contributed to the injury. Unreasonable misuse of the product includes use of the product in a manner that contravenes an express warning or instruction appearing on, accompanying, or attached to the product or on its original container or wrapping, if the user or consumer knew or with the exercise of reasonable and diligent care should have known of the instructions or warnings.

(c) the claimant's contributory negligence or fault, regardless of the legal basis;

(d) the negligence or fault, regardless of the legal basis, of any party to a product liability action;

(e) the negligence or fault, regardless of the legal basis, of any person or entity with whom the claimant has settled or whom the claimant has released from liability as provided in 27-1-703(6).

~~(6)~~(5) The affirmative defenses referred to in subsection ~~(5)~~ (4) mitigate or bar recovery and must be applied in accordance with the principles of comparative negligence set forth in 27-1-702.

(6) A seller named as a defendant in a product liability action may assert the following affirmative defenses against the claimant, user, or consumer, the legal representative of the claimant, user, or consumer, or any person claiming damages by reason of injury to the user or consumer:

(a) the plans or design for the product at issue or the methods and techniques of manufacturing, inspecting, testing, and labeling the product could not have been made safer by the adoption of a reasonable alternative that was available at the time the product was first sold to a user or consumer;

(b) the product liability action was not commenced within 10 years of the date on which the product was first sold or leased to any person or otherwise placed into the stream of commerce, unless:

(i) the seller against whom the product liability action is brought knowingly concealed a defective or unsafe condition in the product that is the subject of the action or has knowingly concealed negligence in the product's construction, manufacture, or assembly, and if the matter so concealed directly resulted in the economic loss, personal injury, property damage, or wrongful death for which the action is brought;

(ii) the product is subject to a government-mandated product recall related to consumer safety, provided that the action must be limited to the extent that the subject of the product liability action and the

underlying reason for the recall are the same;

(iii) the product liability action is brought with respect to a product that is real property or an improvement to real property;

(iv) the product liability action alleges that the product has a defective condition that is unreasonably dangerous because it causes a respiratory or malignant disease with a latency of more than 10 years, and the seller against whom the product liability action is brought is also the manufacturer of the product claimed to be defective; or

(v) the seller or the person who first placed the product that is the subject of the product liability action in the stream of commerce has stated in a written warranty or an advertisement to the public that the product has an expected useful life for a period certain that is greater than 10 years, in which event any product liability action that is otherwise within this section and is not barred by any other provision of law must be brought no later than 2 years following the expiration of that period certain;

(c) at the time the product was first sold or leased to any person or otherwise placed into the stream of commerce:

(i) the product at issue's formula, design, labeling, warning, or instructions complied with mandatory safety statutes, standards, or regulations adopted by the federal or state government or an agency of the federal or state government that were applicable to the product at issue at the time of its manufacture and that addressed the product risk that allegedly caused harm;

(ii) the product at issue was subject to premarket licensing or approval by the federal or state government or an agency of the federal or state government, the seller complied with all of the government's or agency's procedures and requirements pertaining to premarketing licensing or approval, and the product was approved or licensed for sale by the government or agency; or

(iii) the product at issue:

(A) was a drug or medical device;

(B) was approved for safety and efficacy by the United States food and drug administration;

(C) was in compliance, in addition to its labeling, with the United States food and drug administration's approval at the time the product at issue left the control of the seller; and

(D) was not sold in the United States after the effective date of any order of the United States food

and drug administration to remove the product at issue from the market or to withdraw its approval.

(7) A product liability action may not be commenced or maintained against a seller who is not also a manufacturer unless the claimant proves by a preponderance of evidence that:

(a) the seller actually exercised substantial control over some aspect of the manufacture, construction, design, formula, installation, preparation, assembly, testing, packaging, labeling, warnings, and instructions of the product that was a proximate cause of the damages for which the claimant seeks recovery;

(b) the seller altered, modified, or installed the product after it left the manufacturer's possession, and the alteration, modification, or installation was not authorized or requested by the manufacturer, was not performed in compliance with the directions or specifications of the manufacturer, and was a direct cause of the damages for which the claimant seeks recovery;

(c) the seller failed to exercise reasonable care with regard to the assembly, maintenance, service, or repair of the product at issue or in conveying to the claimant the manufacturer's labels, warnings, or instructions, and this failure was a proximate cause of the damages for which the claimant seeks recovery;

(d) the seller made an express factual representation regarding the product independent of any express warranty made by a manufacturer regarding the product, the product failed to conform to the seller's independent express warranty, the claimant relied on the express factual representation, and the failure of the product to conform to the seller's independent express warranty was a proximate cause of the damages for which the claimant seeks recovery;

(e) the manufacturer cannot be identified, despite a good-faith exercise of due diligence to identify the manufacturer of the product;

(f) personal jurisdiction over the manufacturer cannot be obtained in the state;

(g) the manufacturer has been adjudicated bankrupt and a judgment is not otherwise recoverable from the assets of the manufacturer's bankruptcy estate; or

(h) the seller had actual knowledge that the product contained a defect at the time the seller placed the product into the stream of commerce, and that known defect was a proximate cause of the damages for which the claimant seeks recovery.

(8) As used in this section:

(a) "Claimant" means a party seeking relief, including a plaintiff, counterclaimant, or cross-

claimant. When the action seeks to recover damages to or for a person who has died, the term includes the decedent as well as the party or parties bringing the action seeking relief.

(b) "Manufacturer" means a person, corporation or other legal entity that is a designer, formulator, constructor, rebuilder, fabricator, producer, compounder, processor, or assembler of any product or any component part of a product and who places the product or any component part of the product in the stream of commerce.

(c) "Product liability action" means any action brought against a manufacturer or seller of a product, regardless of the substantive legal theory or theories on which the action is brought, for or on account of personal injury, death, or property damage caused by or resulting from the manufacture, construction, design, formula, installation, preparation, assembly, testing, packaging, labeling, or sale of any product, the failure to warn or protect against a danger or hazard in the use, misuse, or unintended use of any product, or the failure to provide proper instructions for the use of any product.

(d) "Seller" means a manufacturer, wholesaler, or retailer. (Terminates on occurrence of contingency--sec. 11(2), Ch. 429, L. 1997; subsection ~~(4)~~(3)(a) terminates January 1, 2031--sec. 15, Ch. 2, L. 2021.)

27-1-719. (Effective on occurrence of contingency) Liability of seller of product for physical harm to user or consumer. ~~(1) As used in this section, "seller" means a manufacturer, wholesaler, or retailer.~~

~~(2)~~(1) A person who sells a product in a defective condition that is unreasonably dangerous to a user or consumer or to the property of a user or consumer is liable for physical harm caused by the product to the ultimate user or consumer or to the user's or consumer's property if:

(a) the seller is engaged in the business of selling the product; and

(b) the product is expected to and does reach the user or consumer without substantial change in the condition in which it is sold.

~~(3)~~(2) The provisions of subsection ~~(2)~~ (1) apply even if:

(a) the seller exercised all possible care in the preparation and sale of the product; and

(b) the user or consumer did not buy the product from or enter into any contractual relation with the seller.

~~(4)~~(3) (a) Subsection ~~(2)~~ (1) does not apply to product liability claims brought for damages caused in

part by covid-19 as defined in 27-1-1601, which are governed by 27-1-1602.

(b) Subsection ~~(2)~~(1)(b) does not apply to a claim for relief based upon improper product design.

~~(5)~~(4) ~~Contributory fault is a defense to the liability of a seller, based on strict liability in tort, for personal injury or property damage caused by a defectively manufactured or defectively designed product.~~ A seller named as a defendant in an action based on strict liability in tort for damages to a person or property caused by a defectively designed or defectively manufactured product may assert the following affirmative defenses against the claimant, user, or consumer, the legal representative of the claimant, user, or consumer, or any person claiming damages by reason of injury to the user or consumer:

(a) ~~The~~ the claimant, user, or consumer of the product discovered the defect or the defect was open and obvious and the claimant, user, or consumer unreasonably made use of the product and was injured by it~~.~~;

(b) ~~The~~ the product was unreasonably misused by the user or consumer and the misuse caused or contributed to the injury. Unreasonable misuse of the product includes use of the product in a manner that contravenes an express warning or instruction appearing on, accompanying, or attached to the product or on its original container or wrapping, if the user or consumer knew or with the exercise of reasonable and diligent care should have known of the instructions or warnings.

(c) the claimant's contributory negligence or fault, regardless of the legal basis;

(d) the negligence or fault, regardless of the legal basis, of any party to a product liability action;

(e) the negligence or fault, regardless of the legal basis, of any person or entity with whom the claimant has settled or whom the claimant has released from liability as provided in 27-1-703(6).

~~(6)~~(5) The affirmative defenses referred to in subsection ~~(5)~~ (4) mitigate or bar recovery and must be applied in accordance with the principles of comparative fault set forth in 27-1-702 and 27-1-705.

(6) A seller named as a defendant in a product liability action may assert the following affirmative defenses against the claimant, user, or consumer, the legal representative of the claimant, user, or consumer, or any person claiming damages by reason of injury to the user or consumer:

(a) the plans or design for the product at issue or the methods and techniques of manufacturing, inspecting, testing, and labeling the product could not have been made safer by the adoption of a reasonable alternative that was available at the time the product was first sold to a user or consumer;

(b) the product liability action was not commenced within 10 years of the date on which the product was first sold or leased to any person or otherwise placed into the stream of commerce, unless:

(i) the seller against whom the product liability action is brought knowingly concealed a defective or unsafe condition in the product that is the subject of the action or has knowingly concealed negligence in the product's construction, manufacture, or assembly, and if the matter so concealed directly resulted in the economic loss, personal injury, property damage, or wrongful death for which the action is brought;

(ii) the product is subject to a government-mandated product recall related to consumer safety, provided that the action must be limited to the extent that the subject of the product liability action and the underlying reason for the recall are the same;

(iii) the product liability action is brought with respect to a product that is real property or an improvement to real property;

(iv) the product liability action alleges that the product has a defective condition that is unreasonably dangerous because it causes a respiratory or malignant disease with a latency of more than 10 years, and the seller against whom the product liability action is brought is also the manufacturer of the product claimed to be defective; or

(v) the seller or the person who first placed the product that is the subject of the product liability action in the stream of commerce has stated in a written warranty or an advertisement to the public that the product has an expected useful life for a period certain that is greater than 10 years, in which event any product liability action that is otherwise within this section and is not barred by any other provision of law must be brought no later than 2 years following the expiration of that period certain;

(c) at the time the product was first sold or leased to any person or otherwise placed into the stream of commerce:

(i) the product at issue's formula, design, labeling, warning, or instructions complied with mandatory safety statutes, standards, or regulations adopted by the federal or state government or an agency of the federal or state government that were applicable to the product at issue at the time of its manufacture and that addressed the product risk that allegedly caused harm;

(ii) the product at issue was subject to premarket licensing or approval by the federal or state government or an agency of the federal or state government, the seller complied with all of the government's or

agency's procedures and requirements pertaining to premarketing licensing or approval, and the product was approved or licensed for sale by the government or agency; or

(iii) the product at issue:

(A) was a drug or medical device;

(B) was approved for safety and efficacy by the United States food and drug administration;

(C) was in compliance, in addition to its labeling, with the United States food and drug administration's approval at the time the product at issue left the control of the seller; and

(D) was not sold in the United States after the effective date of any order of the United States food and drug administration to remove the product at issue from the market or to withdraw its approval.

(7) A product liability action may not be commenced or maintained against a seller who is not also a manufacturer unless the claimant proves by a preponderance of evidence that:

(a) the seller actually exercised substantial control over some aspect of the manufacture, construction, design, formula, installation, preparation, assembly, testing, packaging, labeling, warnings, and instructions of the product that was a proximate cause of the damages for which the claimant seeks recovery;

(b) the seller altered, modified, or installed the product after it left the manufacturer's possession, and the alteration, modification, or installation was not authorized or requested by the manufacturer, was not performed in compliance with the directions or specifications of the manufacturer, and was a direct cause of the damages for which the claimant seeks recovery;

(c) the seller failed to exercise reasonable care with regard to the assembly, maintenance, service, or repair of the product at issue or in conveying to the claimant the manufacturer's labels, warnings, or instructions, and this failure was a proximate cause of the damages for which the claimant seeks recovery;

(d) the seller made an express factual representation regarding the product independent of any express warranty made by a manufacturer regarding the product, the product failed to conform to the seller's independent express warranty, the claimant relied on the express factual representation, and the failure of the product to conform to the seller's independent express warranty was a proximate cause of the damages for which the claimant seeks recovery;

(e) the manufacturer cannot be identified, despite a good-faith exercise of due diligence to identify the manufacturer of the product;

(f) personal jurisdiction over the manufacturer cannot be obtained in the state;

(g) the manufacturer has been adjudicated bankrupt and a judgment is not otherwise recoverable from the assets of the manufacturer's bankruptcy estate; or

(h) the seller had actual knowledge that the product contained a defect at the time the seller placed the product into the stream of commerce, and that known defect was a proximate cause of the damages for which the claimant seeks recovery.

(8) As used in this section:

(a) "Claimant" means a party seeking relief, including a plaintiff, counterclaimant, or cross-claimant. When the action seeks to recover damages to or for a person who has died, the term includes the decedent as well as the party or parties bringing the action seeking relief.

(b) "Manufacturer" means a person, corporation, or other legal entity that is a designer, formulator, constructor, rebuilder, fabricator, producer, compounder, processor, or assembler of any product or any component part of a product and who places the product or any component part of the product in the stream of commerce.

(c) "Product liability action" means any action brought against a manufacturer or seller of a product, regardless of the substantive legal theory or theories on which the action is brought, for or on account of personal injury, death, or property damage caused by or resulting from the manufacture, construction, design, formula, installation, preparation, assembly, testing, packaging, labeling, or sale of any product, the failure to warn or protect against a danger or hazard in the use, misuse, or unintended use of any product, or the failure to provide proper instructions for the use of any product.

(d) "Seller" means a manufacturer, wholesaler, or retailer. (Subsection ~~(4)~~(3)(a) terminates January 1, 2031--sec. 15, Ch. 2, L. 2021.)"

NEW SECTION. **Section 3. Severability.** If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

NEW SECTION. **Section 4. Effective date.** [This act] is effective on passage and approval.

NEW SECTION. **Section 5. Applicability.** [This act] applies to claims that accrue on or after [the effective date of this act].

- END -

SENATE BILL NO. 216

INTRODUCED BY S. FITZPATRICK

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING LAWS RELATING TO CIVIL LAWSUITS INVOLVING PRODUCTS; REVISING LAWS PERTAINING TO STRICT LIABILITY OR CERTAIN BREACH OF WARRANTY LAWS TO ALLOW A DEFENDANT TO ASSERT A DEFENSE THAT THE DAMAGES WERE CAUSED BY A PERSON WITH WHOM THE CLAIMANT HAS SETTLED OR RELEASED FROM LIABILITY; REVISING PRODUCT LIABILITY LAWS TO ALLOW CERTAIN DEFENSES; PROVIDING DEFINITIONS; ALLOWING CONTRIBUTORY NEGLIGENCE AS A DEFENSE IN A PRODUCT LIABILITY LAWSUIT; ALLOWING THE SELLER OF A PRODUCT TO ASSERT CERTAIN DEFENSES; PROVIDING STANDARDS OF PROOF FOR CLAIMANTS IN CERTAIN PRODUCT ACTIONS; AMENDING SECTIONS 27-1-703 AND 27-1-719, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 27-1-703, MCA, is amended to read:

"**27-1-703. (Temporary) Multiple defendants -- determination of liability.** (1) Except as provided in subsections (2) and (3), if the negligence of a party to an action is an issue, each party against whom recovery may be allowed is jointly and severally liable for the amount that may be awarded to the claimant but has the right of contribution from any other person whose negligence may have contributed as a proximate cause to the injury complained of.

(2) A party whose negligence is determined to be 50% or less of the combined negligence of all persons described in subsection (4) is severally liable only and is responsible only for the percentage of negligence attributable to that party, except as provided in subsection (3). The remaining parties are jointly and severally liable for the total less the percentage attributable to the claimant and to any person with whom the claimant has settled or whom the plaintiff has released from liability.

(3) A party may be jointly liable for all damages caused by the negligence of another if both acted in concert in contributing to the claimant's damages or if one party acted as an agent of the other.

(4) On motion of a party against whom a claim is asserted for negligence resulting in death or injury to person or property, any other person whose negligence may have contributed as a proximate cause to the injury complained of may be joined as an additional party to the action. For purposes of determining the percentage of liability attributable to each party whose action contributed to the injury complained of, the trier of fact shall consider the negligence of the claimant, injured person, defendants, and third-party defendants. The liability of persons released from liability by the claimant and persons with whom the claimant has settled must also be considered by the trier of fact, as provided in subsection (6). The trier of fact shall apportion the percentage of negligence of all persons listed in this subsection. Nothing contained in this section makes any party indispensable pursuant to Rule 19, Montana Rules of Civil Procedure.

(5) If for any reason all or part of the contribution from a party liable for contribution cannot be obtained, each of the other parties shall contribute a proportional part of the unpaid portion of the noncontributing party's share and may obtain judgment in a pending or subsequent action for contribution from the noncontributing party. A party found to be 50% or less negligent for the injury complained of is liable for contribution under this section only up to the percentage of negligence attributed to that party.

(6) (a) In an action based on negligence, strict liability as provided in 27-1-719(1), or on a breach of warranty, including but not limited to the provisions of 30-2-314, 30-2-315, or 30-11-215, a defendant may assert as a defense that the damages of the claimant were caused in full or in part by a person with whom the claimant has settled or whom the claimant has released from liability.

(b) In determining the percentage of liability attributable to persons who are parties to the action, the trier of fact shall consider the negligence of persons released from liability by the claimant or with whom the claimant has settled. A finding of negligence of a person with whom the claimant has settled or who has been released from liability by the claimant is not a presumptive or conclusive finding as to that person for purposes of a prior or subsequent action involving that person.

(c) Except for persons who have settled with or have been released by the claimant, comparison of fault with any of the following persons is prohibited:

(i) a person who is immune from liability to the claimant;

(ii) a person who is not subject to the jurisdiction of the court; or

(iii) any other person who could have been, but was not, named as a third party.

(d) A release of settlement entered into by a claimant constitutes an assumption of the liability, if any, allocated to the settled or released person. The claim of the releasing or settling claimant against other persons is reduced by the percentage of the released or settled person's equitable share of the obligation, as determined under subsection (4).

(e) A defendant who alleges that a person released by the claimant or with whom the claimant has settled is at fault in the matter has the burden of proving:

(i) the negligence of the person whom the claimant has released or with whom the claimant has settled;

(ii) any standard of care applicable to the person whom the claimant released or with whom the claimant settled; and

(iii) that the negligence of the person whom the claimant has released or with whom the claimant has settled was a contributing cause under the law applicable to the matter.

(f) A defendant alleging that a settled or released person is at fault in the matter shall affirmatively plead the settlement or release as a defense in the answer. A defendant who gains actual knowledge of a settled or released person after the filing of that defendant's answer may plead the defense of settlement or release with reasonable promptness, as determined by the trial court, in a manner that is consistent with:

(i) giving the defendant a reasonable opportunity to discover the existence of a settled or released person;

(ii) giving the settled or released person an opportunity to intervene in the action to defend against claims affirmatively asserted, including the opportunity to be represented by an attorney, present a defense, participate in discovery, cross-examine witnesses, and appear as a witness of either party; and

(iii) giving the claimant a reasonable opportunity to defend against the defense.

(g) If a defendant alleges that a settled or released person is at fault in the matter, the defendant shall notify each person who the defendant alleges caused the claimant's injuries, in whole or in part. Notification must be made by mailing the defendant's answer to each settled or released person at the person's last-known address by certified mail, return receipt requested. (Terminates on occurrence of contingency--sec. 11(2), Ch. 429, L. 1997.)

27-1-703. (Effective on occurrence of contingency) Multiple defendants -- determination of

liability. Each party against whom recovery may be allowed is jointly and severally liable for the amount that may be awarded to the claimant but has the right of contribution from any other person whose negligence may have contributed as a proximate cause to the injury complained of."

Section 2. Section 27-1-719, MCA, is amended to read:

"**27-1-719. (Temporary) Liability of seller of product for physical harm to user or consumer.** ~~(1) As used in this section, "seller" means a manufacturer, wholesaler, or retailer.~~

~~(2)~~(1) A person who sells a product in a defective condition that is unreasonably dangerous to a user or consumer or to the property of a user or consumer is liable for physical harm caused by the product to the ultimate user or consumer or to the user's or consumer's property if:

(a) the seller is engaged in the business of selling the product; and

(b) the product is expected to and does reach the user or consumer without substantial change in the condition in which it is sold.

~~(3)~~(2) The provisions of subsection ~~(2)~~ (1) apply even if:

(a) the seller exercised all possible care in the preparation and sale of the product; and

(b) the user or consumer did not buy the product from or enter into any contractual relation with the seller.

~~(4)~~(3) (a) Subsection ~~(2)~~ (1) does not apply to product liability claims brought for damages caused in part by covid-19 as defined in 27-1-1601, which are governed by 27-1-1602.

(b) Subsection ~~(2)~~(1)(b) does not apply to a claim for relief based ~~upon~~ on improper product design.

~~(5)~~(4) ~~Except as provided in this subsection, contributory negligence is not a defense to the liability of a seller, based on strict liability in tort, for personal injury or property damage caused by a defectively manufactured or defectively designed product.~~ A seller named as a defendant in an action based on strict liability in tort for damages to person or property caused by a defectively designed or defectively manufactured product may assert the following affirmative defenses against the claimant, user, or consumer, the legal representative of the claimant, user, or consumer, or any person claiming damages by reason of injury to the user or consumer:

(a) ~~The~~ the claimant, user, or consumer of the product discovered the defect or the defect was open and obvious and the claimant, user, or consumer unreasonably made use of the product and was injured by it~~.~~;

(b) ~~The~~ the product was unreasonably misused by the user or consumer and the misuse caused or contributed to the injury. Unreasonable misuse of the product includes use of the product in a manner that contravenes an express warning or instruction appearing on, accompanying, or attached to the product or on its original container or wrapping, if the user or consumer knew or with the exercise of reasonable and diligent care should have known of the instructions or warnings.

(c) the claimant's contributory negligence or fault, regardless of the legal basis;

(d) the negligence or fault, regardless of the legal basis, of any party to a product liability action;

(e) the negligence or fault, regardless of the legal basis, of any person or entity with whom the claimant has settled or whom the claimant has released from liability as provided in 27-1-703(6).

~~(6)~~(5) The affirmative defenses referred to in subsection ~~(5)~~ (4) mitigate or bar recovery and must be applied in accordance with the principles of comparative negligence set forth in 27-1-702.

(6) A seller named as a defendant in a product liability action may assert the following affirmative defenses against the claimant, user, or consumer, the legal representative of the claimant, user, or consumer, or any person claiming damages by reason of injury to the user or consumer:

(a) the plans or design for the product at issue or the methods and techniques of manufacturing, inspecting, testing, and labeling the product could not have been made safer by the adoption of a reasonable alternative that was available at the time the product was first sold to a user or consumer; or

(b) the product liability action was not commenced within 10 years of the date on which the product was first sold or leased to any person or otherwise placed into the stream of commerce, unless:

(i) the seller against whom the product liability action is brought knowingly concealed a defective or unsafe condition in the product that is the subject of the action or has knowingly concealed negligence in the product's construction, manufacture, or assembly, and if the matter so concealed directly resulted in the economic loss, personal injury, property damage, or wrongful death for which the action is brought;

(ii) the product is subject to a government-mandated product recall related to consumer safety, provided that the action must be limited to the extent that the subject of the product liability action and the

underlying reason for the recall are the same;

(iii) the product liability action is brought with respect to a product that is real property or an improvement to real property;

(iv) the product liability action alleges that the product has a defective condition that is unreasonably dangerous because it causes a respiratory or malignant disease with a latency of more than 10 years, and the seller against whom the product liability action is brought is also the manufacturer of the product claimed to be defective; or

(v) the seller or the person who first placed the product that is the subject of the product liability action in the stream of commerce has stated in a written warranty or an advertisement to the public that the product has an expected useful life for a period certain that is greater than 10 years, in which event any product liability action that is otherwise within this section and is not barred by any other provision of law must be brought no later than 2 years following the expiration of that period certain~~;~~.

(7) In a product liability action, it is rebuttably presumed that the product that caused the injury, death, or property damage was not in a defective condition that is unreasonably dangerous and that the manufacturer or seller of the product was not negligent. The jury must be informed of this presumption if

~~(c)~~ at the time the product was first sold or leased to any person or otherwise placed into the stream of commerce:

~~(i)~~(a) the product at issue's formula, design, labeling, warning, or instructions complied with mandatory safety statutes, standards, or regulations adopted by the federal or state government or an agency of the federal or state government that were applicable to the product at issue at the time of its manufacture and that addressed the product risk that allegedly caused harm;

~~(ii)~~(b) the product at issue was subject to premarket licensing or approval by the federal or state government or an agency of the federal or state government, the seller complied with all of the government's or agency's procedures and requirements pertaining to premarketing licensing or approval, and the product was approved or licensed for sale by the government or agency; or

~~(iii)~~(c) the product at issue:

~~(A)~~(i) was a drug or medical device;

~~(B)~~(ii) was approved for safety and efficacy by the United States food and drug administration;

~~(C)~~(iii) was in compliance, in addition to its labeling, with the United States food and drug administration's approval at the time the product at issue left the control of the seller; and

~~(D)~~(iv) was not sold in the United States after the effective date of any order of the United States food and drug administration to remove the product at issue from the market or to withdraw its approval.

~~(7)~~(8) A product liability action may not be commenced or maintained against a seller who is not also a manufacturer unless the claimant proves by a preponderance of evidence that:

(a) the seller actually exercised substantial control over some aspect of the manufacture, construction, design, formula, installation, preparation, assembly, testing, packaging, labeling, warnings, and instructions of the product that was a proximate cause of the damages for which the claimant seeks recovery;

(b) the seller altered, modified, or installed the product after it left the manufacturer's possession, and the alteration, modification, or installation was not authorized or requested by the manufacturer, was not performed in compliance with the directions or specifications of the manufacturer, and was a direct cause of the damages for which the claimant seeks recovery;

(c) the seller failed to exercise reasonable care with regard to the assembly, maintenance, service, or repair of the product at issue or in conveying to the claimant the manufacturer's labels, warnings, or instructions, and this failure was a proximate cause of the damages for which the claimant seeks recovery;

(d) the seller made an express factual representation regarding the product independent of any express warranty made by a manufacturer regarding the product, the product failed to conform to the seller's independent express warranty, the claimant relied on the express factual representation, and the failure of the product to conform to the seller's independent express warranty was a proximate cause of the damages for which the claimant seeks recovery;

(e) the manufacturer cannot be identified, despite a good-faith exercise of due diligence to identify the manufacturer of the product;

(f) personal jurisdiction over the manufacturer cannot be obtained in the state;

(g) the manufacturer has been adjudicated bankrupt and a judgment is not otherwise recoverable from the assets of the manufacturer's bankruptcy estate; or

(h) the seller had actual knowledge that the product contained a defect at the time the seller placed the product into the stream of commerce, and that known defect was a proximate cause of the damages

for which the claimant seeks recovery.

~~(8)~~(9) As used in this section:

(a) "Claimant" means a party seeking relief, including a plaintiff, counterclaimant, or cross-claimant. When the action seeks to recover damages to or for a person who has died, the term includes the decedent as well as the party or parties bringing the action seeking relief.

(b) "Manufacturer" means a person, corporation or other legal entity that is a designer, formulator, constructor, rebuilder, fabricator, producer, compounder, processor, or assembler of any product or any component part of a product and who places the product or any component part of the product in the stream of commerce.

(c) "Product liability action" means any action brought against a manufacturer or seller of a product, regardless of the substantive legal theory or theories on which the action is brought, for or on account of personal injury, death, or property damage caused by or resulting from the manufacture, construction, design, formula, installation, preparation, assembly, testing, packaging, labeling, or sale of any product, the failure to warn or protect against a danger or hazard in the use, misuse, or unintended use of any product, or the failure to provide proper instructions for the use of any product.

(d) "Seller" means a manufacturer, wholesaler, or retailer. (Terminates on occurrence of contingency--sec. 11(2), Ch. 429, L. 1997; subsection ~~(4)~~(3)(a) terminates January 1, 2031--sec. 15, Ch. 2, L. 2021.)

27-1-719. (Effective on occurrence of contingency) Liability of seller of product for physical harm to user or consumer. ~~(1) As used in this section, "seller" means a manufacturer, wholesaler, or retailer.~~

~~(2)~~(1) A person who sells a product in a defective condition that is unreasonably dangerous to a user or consumer or to the property of a user or consumer is liable for physical harm caused by the product to the ultimate user or consumer or to the user's or consumer's property if:

(a) the seller is engaged in the business of selling the product; and

(b) the product is expected to and does reach the user or consumer without substantial change in the condition in which it is sold.

~~(3)~~(2) The provisions of subsection ~~(2)~~ (1) apply even if:

(a) the seller exercised all possible care in the preparation and sale of the product; and

(b) the user or consumer did not buy the product from or enter into any contractual relation with the seller.

~~(4)~~(3) (a) Subsection ~~(2)~~ (1) does not apply to product liability claims brought for damages caused in part by covid-19 as defined in 27-1-1601, which are governed by 27-1-1602.

(b) Subsection ~~(2)~~(1)(b) does not apply to a claim for relief based upon improper product design.

~~(5)~~(4) ~~Contributory fault is a defense to the liability of a seller, based on strict liability in tort, for personal injury or property damage caused by a defectively manufactured or defectively designed product. A~~ seller named as a defendant in an action based on strict liability in tort for damages to a person or property caused by a defectively designed or defectively manufactured product may assert the following affirmative defenses against the claimant, user, or consumer, the legal representative of the claimant, user, or consumer, or any person claiming damages by reason of injury to the user or consumer:

(a) ~~The~~ the claimant, user, or consumer of the product discovered the defect or the defect was open and obvious and the claimant, user, or consumer unreasonably made use of the product and was injured by it~~.~~;

(b) ~~The~~ the product was unreasonably misused by the user or consumer and the misuse caused or contributed to the injury. Unreasonable misuse of the product includes use of the product in a manner that contravenes an express warning or instruction appearing on, accompanying, or attached to the product or on its original container or wrapping, if the user or consumer knew or with the exercise of reasonable and diligent care should have known of the instructions or warnings.

(c) the claimant's contributory negligence or fault, regardless of the legal basis;

(d) the negligence or fault, regardless of the legal basis, of any party to a product liability action;

(e) the negligence or fault, regardless of the legal basis, of any person or entity with whom the claimant has settled or whom the claimant has released from liability as provided in 27-1-703(6).

~~(6)~~(5) The affirmative defenses referred to in subsection ~~(5)~~ (4) mitigate or bar recovery and must be applied in accordance with the principles of comparative fault set forth in 27-1-702 and 27-1-705.

(6) A seller named as a defendant in a product liability action may assert the following affirmative defenses against the claimant, user, or consumer, the legal representative of the claimant, user, or consumer, or any person claiming damages by reason of injury to the user or consumer:

(a) the plans or design for the product at issue or the methods and techniques of manufacturing, inspecting, testing, and labeling the product could not have been made safer by the adoption of a reasonable alternative that was available at the time the product was first sold to a user or consumer; or

(b) the product liability action was not commenced within 10 years of the date on which the product was first sold or leased to any person or otherwise placed into the stream of commerce, unless:

(i) the seller against whom the product liability action is brought knowingly concealed a defective or unsafe condition in the product that is the subject of the action or has knowingly concealed negligence in the product's construction, manufacture, or assembly, and if the matter so concealed directly resulted in the economic loss, personal injury, property damage, or wrongful death for which the action is brought;

(ii) the product is subject to a government-mandated product recall related to consumer safety, provided that the action must be limited to the extent that the subject of the product liability action and the underlying reason for the recall are the same;

(iii) the product liability action is brought with respect to a product that is real property or an improvement to real property;

(iv) the product liability action alleges that the product has a defective condition that is unreasonably dangerous because it causes a respiratory or malignant disease with a latency of more than 10 years, and the seller against whom the product liability action is brought is also the manufacturer of the product claimed to be defective; or

(v) the seller or the person who first placed the product that is the subject of the product liability action in the stream of commerce has stated in a written warranty or an advertisement to the public that the product has an expected useful life for a period certain that is greater than 10 years, in which event any product liability action that is otherwise within this section and is not barred by any other provision of law must be brought no later than 2 years following the expiration of that period certain~~;~~.

(7) In a product liability action, it is rebuttably presumed that the product that caused the injury, death, or property damage was not in a defective condition that is unreasonably dangerous and that the manufacturer or seller of the product was not negligent. The jury must be informed of this presumption if

~~(c)~~ at the time the product was first sold or leased to any person or otherwise placed into the stream of commerce:

~~(i)~~(a) the product at issue's formula, design, labeling, warning, or instructions complied with mandatory safety statutes, standards, or regulations adopted by the federal or state government or an agency of the federal or state government that were applicable to the product at issue at the time of its manufacture and that addressed the product risk that allegedly caused harm;

~~(ii)~~(b) the product at issue was subject to premarket licensing or approval by the federal or state government or an agency of the federal or state government, the seller complied with all of the government's or agency's procedures and requirements pertaining to premarketing licensing or approval, and the product was approved or licensed for sale by the government or agency; or

~~(iii)~~(c) the product at issue:

~~(A)~~(i) was a drug or medical device;

~~(B)~~(ii) was approved for safety and efficacy by the United States food and drug administration;

~~(C)~~(iii) was in compliance, in addition to its labeling, with the United States food and drug administration's approval at the time the product at issue left the control of the seller; and

~~(D)~~(iv) was not sold in the United States after the effective date of any order of the United States food and drug administration to remove the product at issue from the market or to withdraw its approval.

~~(7)~~(8) A product liability action may not be commenced or maintained against a seller who is not also a manufacturer unless the claimant proves by a preponderance of evidence that:

(a) the seller actually exercised substantial control over some aspect of the manufacture, construction, design, formula, installation, preparation, assembly, testing, packaging, labeling, warnings, and instructions of the product that was a proximate cause of the damages for which the claimant seeks recovery;

(b) the seller altered, modified, or installed the product after it left the manufacturer's possession, and the alteration, modification, or installation was not authorized or requested by the manufacturer, was not performed in compliance with the directions or specifications of the manufacturer, and was a direct cause of the damages for which the claimant seeks recovery;

(c) the seller failed to exercise reasonable care with regard to the assembly, maintenance, service, or repair of the product at issue or in conveying to the claimant the manufacturer's labels, warnings, or instructions, and this failure was a proximate cause of the damages for which the claimant seeks recovery;

(d) the seller made an express factual representation regarding the product independent of any

express warranty made by a manufacturer regarding the product, the product failed to conform to the seller's independent express warranty, the claimant relied on the express factual representation, and the failure of the product to conform to the seller's independent express warranty was a proximate cause of the damages for which the claimant seeks recovery;

(e) the manufacturer cannot be identified, despite a good-faith exercise of due diligence to identify the manufacturer of the product;

(f) personal jurisdiction over the manufacturer cannot be obtained in the state;

(g) the manufacturer has been adjudicated bankrupt and a judgment is not otherwise recoverable from the assets of the manufacturer's bankruptcy estate; or

(h) the seller had actual knowledge that the product contained a defect at the time the seller placed the product into the stream of commerce, and that known defect was a proximate cause of the damages for which the claimant seeks recovery.

~~(8)~~(9) As used in this section:

(a) "Claimant" means a party seeking relief, including a plaintiff, counterclaimant, or cross-claimant. When the action seeks to recover damages to or for a person who has died, the term includes the decedent as well as the party or parties bringing the action seeking relief.

(b) "Manufacturer" means a person, corporation, or other legal entity that is a designer, formulator, constructor, rebuilder, fabricator, producer, compounder, processor, or assembler of any product or any component part of a product and who places the product or any component part of the product in the stream of commerce.

(c) "Product liability action" means any action brought against a manufacturer or seller of a product, regardless of the substantive legal theory or theories on which the action is brought, for or on account of personal injury, death, or property damage caused by or resulting from the manufacture, construction, design, formula, installation, preparation, assembly, testing, packaging, labeling, or sale of any product, the failure to warn or protect against a danger or hazard in the use, misuse, or unintended use of any product, or the failure to provide proper instructions for the use of any product.

(d) "Seller" means a manufacturer, wholesaler, or retailer. (Subsection ~~(4)~~(3)(a) terminates January 1, 2031--sec. 15, Ch. 2, L. 2021.)"

NEW SECTION. **Section 3. Severability.** If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

NEW SECTION. **Section 4. Effective date.** [This act] is effective on passage and approval.

NEW SECTION. **Section 5. Applicability.** [This act] applies to claims that accrue on or after [the effective date of this act].

- END -

AMEND

SENATE BILL NO. 216

INTRODUCED BY S. FITZPATRICK

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING LAWS RELATING TO CIVIL LAWSUITS INVOLVING PRODUCTS; REVISING LAWS PERTAINING TO STRICT LIABILITY OR CERTAIN BREACH OF WARRANTY LAWS TO ALLOW A DEFENDANT TO ASSERT A DEFENSE THAT THE DAMAGES WERE CAUSED BY A PERSON WITH WHOM THE CLAIMANT HAS SETTLED OR RELEASED FROM LIABILITY; REVISING PRODUCT LIABILITY LAWS TO ALLOW CERTAIN DEFENSES; PROVIDING DEFINITIONS; ALLOWING CONTRIBUTORY NEGLIGENCE AS A DEFENSE IN A PRODUCT LIABILITY LAWSUIT; ALLOWING THE SELLER OF A PRODUCT TO ASSERT CERTAIN DEFENSES; PROVIDING STANDARDS OF PROOF FOR CLAIMANTS IN CERTAIN PRODUCT ACTIONS; AMENDING SECTIONS 27-1-703 AND 27-1-719, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 27-1-703, MCA, is amended to read:

"**27-1-703. (Temporary) Multiple defendants -- determination of liability.** (1) Except as provided in subsections (2) and (3), if the negligence of a party to an action is an issue, each party against whom recovery may be allowed is jointly and severally liable for the amount that may be awarded to the claimant but has the right of contribution from any other person whose negligence may have contributed as a proximate cause to the injury complained of.

(2) A party whose negligence is determined to be 50% or less of the combined negligence of all persons described in subsection (4) is severally liable only and is responsible only for the percentage of negligence attributable to that party, except as provided in subsection (3). The remaining parties are jointly and severally liable for the total less the percentage attributable to the claimant and to any person with whom the claimant has settled or whom the plaintiff has released from liability.

(3) A party may be jointly liable for all damages caused by the negligence of another if both acted in concert in contributing to the claimant's damages or if one party acted as an agent of the other.

(4) On motion of a party against whom a claim is asserted for negligence resulting in death or injury to person or property, any other person whose negligence may have contributed as a proximate cause to the injury complained of may be joined as an additional party to the action. For purposes of determining the percentage of liability attributable to each party whose action contributed to the injury complained of, the trier of fact shall consider the negligence of the claimant, injured person, defendants, and third-party defendants. The liability of persons released from liability by the claimant and persons with whom the claimant has settled must also be considered by the trier of fact, as provided in subsection (6). The trier of fact shall apportion the percentage of negligence of all persons listed in this subsection. Nothing contained in this section makes any party indispensable pursuant to Rule 19, Montana Rules of Civil Procedure.

(5) If for any reason all or part of the contribution from a party liable for contribution cannot be obtained, each of the other parties shall contribute a proportional part of the unpaid portion of the noncontributing party's share and may obtain judgment in a pending or subsequent action for contribution from the noncontributing party. A party found to be 50% or less negligent for the injury complained of is liable for contribution under this section only up to the percentage of negligence attributed to that party.

(6) (a) In an action based on negligence, strict liability as provided in 27-1-719(1), or on a breach of warranty, including but not limited to the provisions of 30-2-314, 30-2-315, or 30-11-215, a defendant may assert as a defense that the damages of the claimant were caused in full or in part by a person with whom the claimant has settled or whom the claimant has released from liability.

(b) In determining the percentage of liability attributable to persons who are parties to the action, the trier of fact shall consider the negligence of persons released from liability by the claimant or with whom the claimant has settled. A finding of negligence of a person with whom the claimant has settled or who has been released from liability by the claimant is not a presumptive or conclusive finding as to that person for purposes of a prior or subsequent action involving that person.

(c) Except for persons who have settled with or have been released by the claimant, comparison of fault with any of the following persons is prohibited:

(i) a person who is immune from liability to the claimant;

(ii) a person who is not subject to the jurisdiction of the court; or

(iii) any other person who could have been, but was not, named as a third party.

(d) A release of settlement entered into by a claimant constitutes an assumption of the liability, if any, allocated to the settled or released person. The claim of the releasing or settling claimant against other persons is reduced by the percentage of the released or settled person's equitable share of the obligation, as determined under subsection (4).

(e) A defendant who alleges that a person released by the claimant or with whom the claimant has settled is at fault in the matter has the burden of proving:

(i) the negligence of the person whom the claimant has released or with whom the claimant has settled;

(ii) any standard of care applicable to the person whom the claimant released or with whom the claimant settled; and

(iii) that the negligence of the person whom the claimant has released or with whom the claimant has settled was a contributing cause under the law applicable to the matter.

(f) A defendant alleging that a settled or released person is at fault in the matter shall affirmatively plead the settlement or release as a defense in the answer. A defendant who gains actual knowledge of a settled or released person after the filing of that defendant's answer may plead the defense of settlement or release with reasonable promptness, as determined by the trial court, in a manner that is consistent with:

(i) giving the defendant a reasonable opportunity to discover the existence of a settled or released person;

(ii) giving the settled or released person an opportunity to intervene in the action to defend against claims affirmatively asserted, including the opportunity to be represented by an attorney, present a defense, participate in discovery, cross-examine witnesses, and appear as a witness of either party; and

(iii) giving the claimant a reasonable opportunity to defend against the defense.

(g) If a defendant alleges that a settled or released person is at fault in the matter, the defendant shall notify each person who the defendant alleges caused the claimant's injuries, in whole or in part. Notification must be made by mailing the defendant's answer to each settled or released person at the person's last-known address by certified mail, return receipt requested. (Terminates on occurrence of contingency--sec. 11(2), Ch. 429, L. 1997.)

27-1-703. (Effective on occurrence of contingency) Multiple defendants -- determination of

liability. Each party against whom recovery may be allowed is jointly and severally liable for the amount that may be awarded to the claimant but has the right of contribution from any other person whose negligence may have contributed as a proximate cause to the injury complained of."

Section 2. Section 27-1-719, MCA, is amended to read:

"**27-1-719. (Temporary) Liability of seller of product for physical harm to user or consumer.** ~~(1) As used in this section, "seller" means a manufacturer, wholesaler, or retailer.~~

~~(2)~~(1) A person who sells a product in a defective condition that is unreasonably dangerous to a user or consumer or to the property of a user or consumer is liable for physical harm caused by the product to the ultimate user or consumer or to the user's or consumer's property if:

(a) the seller is engaged in the business of selling the product; and

(b) the product is expected to and does reach the user or consumer without substantial change in the condition in which it is sold.

~~(3)~~(2) The provisions of subsection ~~(2)~~ (1) apply even if:

(a) the seller exercised all possible care in the preparation and sale of the product; and

(b) the user or consumer did not buy the product from or enter into any contractual relation with the seller.

~~(4)~~(3) (a) Subsection ~~(2)~~ (1) does not apply to product liability claims brought for damages caused in part by covid-19 as defined in 27-1-1601, which are governed by 27-1-1602.

(b) Subsection ~~(2)~~(1)(b) does not apply to a claim for relief based ~~upon~~ on improper product design.

~~(5)~~(4) ~~Except as provided in this subsection, contributory negligence is not a defense to the liability of a seller, based on strict liability in tort, for personal injury or property damage caused by a defectively manufactured or defectively designed product.~~ A seller named as a defendant in an action based on strict liability in tort for damages to person or property caused by a defectively designed or defectively manufactured product may assert the following affirmative defenses against the claimant, user, or consumer, the legal representative of the claimant, user, or consumer, or any person claiming damages by reason of injury to the user or consumer:

(a) ~~The~~ the claimant, user, or consumer of the product discovered the defect or the defect was open and obvious and the claimant, user, or consumer unreasonably made use of the product and was injured by it~~.~~;

(b) ~~The~~ the product was unreasonably misused by the user or consumer and the misuse caused or contributed to the injury. Unreasonable misuse of the product includes use of the product in a manner that contravenes an express warning or instruction appearing on, accompanying, or attached to the product or on its original container or wrapping, if the user or consumer knew or with the exercise of reasonable and diligent care should have known of the instructions or warnings.

(c) the claimant's contributory negligence or fault, regardless of the legal basis;

(d) the negligence or fault, regardless of the legal basis, of any party to a product liability action;

(e) the negligence or fault, regardless of the legal basis, of any person or entity with whom the claimant has settled or whom the claimant has released from liability as provided in 27-1-703(6).

~~(6)~~(5) The affirmative defenses referred to in subsection ~~(5)~~ (4) mitigate or bar recovery and must be applied in accordance with the principles of comparative negligence set forth in 27-1-702.

(6) A seller named as a defendant in a product liability action may assert the following affirmative defenses against the claimant, user, or consumer, the legal representative of the claimant, user, or consumer, or any person claiming damages by reason of injury to the user or consumer:

(a) the plans or design for the product at issue or the methods and techniques of manufacturing, inspecting, testing, and labeling the product could not have been made safer by the adoption of a reasonable alternative that was available at the time the product was first sold to a user or consumer; or

(b) the product liability action was not commenced within 10 years of the date on which the product was first sold or leased to any person or otherwise placed into the stream of commerce, unless:

(i) the seller against whom the product liability action is brought knowingly concealed a defective or unsafe condition in the product that is the subject of the action or has knowingly concealed negligence in the product's construction, manufacture, or assembly, and if the matter so concealed directly resulted in the economic loss, personal injury, property damage, or wrongful death for which the action is brought;

(ii) the product is subject to a government-mandated product recall related to consumer safety, provided that the action must be limited to the extent that the subject of the product liability action and the

underlying reason for the recall are the same;

(iii) the product liability action is brought with respect to a product that is real property or an improvement to real property;

(iv) the product liability action alleges that the product has a defective condition that is unreasonably dangerous because it causes a respiratory or malignant disease with a latency of more than 10 years, and the seller against whom the product liability action is brought is also the manufacturer of the product claimed to be defective; or

(v) the seller or the person who first placed the product that is the subject of the product liability action in the stream of commerce has stated in a written warranty or an advertisement to the public that the product has an expected useful life for a period certain that is greater than 10 years, in which event any product liability action that is otherwise within this section and is not barred by any other provision of law must be brought no later than 2 years following the expiration of that period certain~~;~~.

(7) In a product liability action, it is rebuttably presumed that the product that caused the injury, death, or property damage was not in a defective condition that is unreasonably dangerous and that the manufacturer or seller of the product was not negligent. The jury must be informed of this presumption if

~~(c)~~ at the time the product was first sold or leased to any person or otherwise placed into the stream of commerce:

~~(i)~~(a) the product at issue's formula, design, labeling, warning, or instructions complied with mandatory safety statutes, standards, or regulations adopted by the federal or state government or an agency of the federal or state government that were applicable to the product at issue at the time of its manufacture and that addressed the product risk that allegedly caused harm;

~~(ii)~~(b) the product at issue was subject to premarket licensing or approval by the federal or state government or an agency of the federal or state government, the seller complied with all of the government's or agency's procedures and requirements pertaining to premarketing licensing or approval, and the product was approved or licensed for sale by the government or agency; or

~~(iii)~~(c) the product at issue:

~~(A)~~(i) was a drug or medical device;

~~(B)~~(ii) was approved for safety and efficacy by the United States food and drug administration;

~~(C)~~(iii) was in compliance, in addition to its labeling, with the United States food and drug administration's approval at the time the product at issue left the control of the seller; and

~~(D)~~(iv) was not sold in the United States after the effective date of any order of the United States food and drug administration to remove the product at issue from the market or to withdraw its approval.

~~(7)~~(8) A product liability action may not be commenced or maintained against a seller who is not also a manufacturer unless the claimant proves by a preponderance of evidence that:

(a) the seller actually exercised substantial control over some aspect of the manufacture, construction, design, formula, installation, preparation, assembly, testing, packaging, labeling, warnings, and instructions of the product that was a proximate cause of the damages for which the claimant seeks recovery;

(b) the seller altered, modified, or installed the product after it left the manufacturer's possession, and the alteration, modification, or installation was not authorized or requested by the manufacturer, was not performed in compliance with the directions or specifications of the manufacturer, and was a direct cause of the damages for which the claimant seeks recovery;

(c) the seller failed to exercise reasonable care with regard to the assembly, maintenance, service, or repair of the product at issue or in conveying to the claimant the manufacturer's labels, warnings, or instructions, and this failure was a proximate cause of the damages for which the claimant seeks recovery;

(d) the seller made an express factual representation regarding the product independent of any express warranty made by a manufacturer regarding the product, the product failed to conform to the seller's independent express warranty, the claimant relied on the express factual representation, and the failure of the product to conform to the seller's independent express warranty was a proximate cause of the damages for which the claimant seeks recovery;

(e) the manufacturer cannot be identified, despite a good-faith exercise of due diligence to identify the manufacturer of the product;

(f) personal jurisdiction over the manufacturer cannot be obtained in the state;

(g) the manufacturer has been adjudicated bankrupt and a judgment is not otherwise recoverable from the assets of the manufacturer's bankruptcy estate; or

(h) the seller had actual knowledge that the product contained a defect at the time the seller placed the product into the stream of commerce, and that known defect was a proximate cause of the damages

for which the claimant seeks recovery.

~~(8)~~(9) As used in this section:

(a) "Claimant" means a party seeking relief, including a plaintiff, counterclaimant, or cross-claimant. When the action seeks to recover damages to or for a person who has died, the term includes the decedent as well as the party or parties bringing the action seeking relief.

(b) "Manufacturer" means a person, corporation or other legal entity that is a designer, formulator, constructor, rebuilder, fabricator, producer, compounder, processor, or assembler of any product or any component part of a product and who places the product or any component part of the product in the stream of commerce.

(c) "Product liability action" means any action brought against a manufacturer or seller of a product, regardless of the substantive legal theory or theories on which the action is brought, for or on account of personal injury, death, or property damage caused by or resulting from the manufacture, construction, design, formula, installation, preparation, assembly, testing, packaging, labeling, or sale of any product, the failure to warn or protect against a danger or hazard in the use, misuse, or unintended use of any product, or the failure to provide proper instructions for the use of any product.

(d) "Seller" means a manufacturer, wholesaler, or retailer. (Terminates on occurrence of contingency--sec. 11(2), Ch. 429, L. 1997; subsection ~~(4)~~(3)(a) terminates January 1, 2031--sec. 15, Ch. 2, L. 2021.)

27-1-719. (Effective on occurrence of contingency) Liability of seller of product for physical harm to user or consumer. ~~(1) As used in this section, "seller" means a manufacturer, wholesaler, or retailer.~~

~~(2)~~(1) A person who sells a product in a defective condition that is unreasonably dangerous to a user or consumer or to the property of a user or consumer is liable for physical harm caused by the product to the ultimate user or consumer or to the user's or consumer's property if:

(a) the seller is engaged in the business of selling the product; and

(b) the product is expected to and does reach the user or consumer without substantial change in the condition in which it is sold.

~~(3)~~(2) The provisions of subsection ~~(2)~~ (1) apply even if:

(a) the seller exercised all possible care in the preparation and sale of the product; and

(b) the user or consumer did not buy the product from or enter into any contractual relation with the seller.

~~(4)~~(3) (a) Subsection ~~(2)~~ (1) does not apply to product liability claims brought for damages caused in part by covid-19 as defined in 27-1-1601, which are governed by 27-1-1602.

(b) Subsection ~~(2)~~(1)(b) does not apply to a claim for relief based upon improper product design.

~~(5)~~(4) ~~Contributory fault is a defense to the liability of a seller, based on strict liability in tort, for personal injury or property damage caused by a defectively manufactured or defectively designed product. A~~ seller named as a defendant in an action based on strict liability in tort for damages to a person or property caused by a defectively designed or defectively manufactured product may assert the following affirmative defenses against the claimant, user, or consumer, the legal representative of the claimant, user, or consumer, or any person claiming damages by reason of injury to the user or consumer:

(a) ~~The~~ the claimant, user, or consumer of the product discovered the defect or the defect was open and obvious and the claimant, user, or consumer unreasonably made use of the product and was injured by it~~.~~;

(b) ~~The~~ the product was unreasonably misused by the user or consumer and the misuse caused or contributed to the injury. Unreasonable misuse of the product includes use of the product in a manner that contravenes an express warning or instruction appearing on, accompanying, or attached to the product or on its original container or wrapping, if the user or consumer knew or with the exercise of reasonable and diligent care should have known of the instructions or warnings.

(c) the claimant's contributory negligence or fault, regardless of the legal basis;

(d) the negligence or fault, regardless of the legal basis, of any party to a product liability action;

(e) the negligence or fault, regardless of the legal basis, of any person or entity with whom the claimant has settled or whom the claimant has released from liability as provided in 27-1-703(6).

~~(6)~~(5) The affirmative defenses referred to in subsection ~~(5)~~ (4) mitigate or bar recovery and must be applied in accordance with the principles of comparative fault set forth in 27-1-702 and 27-1-705.

(6) A seller named as a defendant in a product liability action may assert the following affirmative defenses against the claimant, user, or consumer, the legal representative of the claimant, user, or consumer, or any person claiming damages by reason of injury to the user or consumer:

(a) the plans or design for the product at issue or the methods and techniques of manufacturing, inspecting, testing, and labeling the product could not have been made safer by the adoption of a reasonable alternative that was available at the time the product was first sold to a user or consumer; or

(b) the product liability action was not commenced within 10 years of the date on which the product was first sold or leased to any person or otherwise placed into the stream of commerce, unless:

(i) the seller against whom the product liability action is brought knowingly concealed a defective or unsafe condition in the product that is the subject of the action or has knowingly concealed negligence in the product's construction, manufacture, or assembly, and if the matter so concealed directly resulted in the economic loss, personal injury, property damage, or wrongful death for which the action is brought;

(ii) the product is subject to a government-mandated product recall related to consumer safety, provided that the action must be limited to the extent that the subject of the product liability action and the underlying reason for the recall are the same;

(iii) the product liability action is brought with respect to a product that is real property or an improvement to real property;

(iv) the product liability action alleges that the product has a defective condition that is unreasonably dangerous because it causes a respiratory or malignant disease with a latency of more than 10 years, and the seller against whom the product liability action is brought is also the manufacturer of the product claimed to be defective; or

(v) the seller or the person who first placed the product that is the subject of the product liability action in the stream of commerce has stated in a written warranty or an advertisement to the public that the product has an expected useful life for a period certain that is greater than 10 years, in which event any product liability action that is otherwise within this section and is not barred by any other provision of law must be brought no later than 2 years following the expiration of that period certain~~;~~.

(7) In a product liability action, it is rebuttably presumed that the product that caused the injury, death, or property damage was not in a defective condition that is unreasonably dangerous and that the manufacturer or seller of the product was not negligent. The jury must be informed of this presumption if

~~(c)~~ at the time the product was first sold or leased to any person or otherwise placed into the stream of commerce:

~~(i)~~(a) the product at issue's formula, design, labeling, warning, or instructions complied with mandatory safety statutes, standards, or regulations adopted by the federal or state government or an agency of the federal or state government that were applicable to the product at issue at the time of its manufacture and that addressed the product risk that allegedly caused harm;

~~(ii)~~(b) the product at issue was subject to premarket licensing or approval by the federal or state government or an agency of the federal or state government, the seller complied with all of the government's or agency's procedures and requirements pertaining to premarketing licensing or approval, and the product was approved or licensed for sale by the government or agency; or

~~(iii)~~(c) the product at issue:

~~(A)~~(i) was a drug or medical device;

~~(B)~~(ii) was approved for safety and efficacy by the United States food and drug administration;

~~(C)~~(iii) was in compliance, in addition to its labeling, with the United States food and drug administration's approval at the time the product at issue left the control of the seller; and

~~(D)~~(iv) was not sold in the United States after the effective date of any order of the United States food and drug administration to remove the product at issue from the market or to withdraw its approval.

~~(7)~~(8) A product liability action may not be commenced or maintained against a seller who is not also a manufacturer unless the claimant proves by a preponderance of evidence that:

(a) the seller actually exercised substantial control over some aspect of the manufacture, construction, design, formula, installation, preparation, assembly, testing, packaging, labeling, warnings, and instructions of the product that was a proximate cause of the damages for which the claimant seeks recovery;

(b) the seller altered, modified, or installed the product after it left the manufacturer's possession, and the alteration, modification, or installation was not authorized or requested by the manufacturer, was not performed in compliance with the directions or specifications of the manufacturer, and was a direct cause of the damages for which the claimant seeks recovery;

(c) the seller failed to exercise reasonable care with regard to the assembly, maintenance, service, or repair of the product at issue or in conveying to the claimant the manufacturer's labels, warnings, or instructions, and this failure was a proximate cause of the damages for which the claimant seeks recovery;

(d) the seller made an express factual representation regarding the product independent of any

express warranty made by a manufacturer regarding the product, the product failed to conform to the seller's independent express warranty, the claimant relied on the express factual representation, and the failure of the product to conform to the seller's independent express warranty was a proximate cause of the damages for which the claimant seeks recovery;

(e) the manufacturer cannot be identified, despite a good-faith exercise of due diligence to identify the manufacturer of the product;

(f) personal jurisdiction over the manufacturer cannot be obtained in the state;

(g) the manufacturer has been adjudicated bankrupt and a judgment is not otherwise recoverable from the assets of the manufacturer's bankruptcy estate; or

(h) the seller had actual knowledge that the product contained a defect at the time the seller placed the product into the stream of commerce, and that known defect was a proximate cause of the damages for which the claimant seeks recovery.

~~(8)~~(9) As used in this section:

(a) "Claimant" means a party seeking relief, including a plaintiff, counterclaimant, or cross-claimant. When the action seeks to recover damages to or for a person who has died, the term includes the decedent as well as the party or parties bringing the action seeking relief.

(b) "Manufacturer" means a person, corporation, or other legal entity that is a designer, formulator, constructor, rebuilder, fabricator, producer, compounder, processor, or assembler of any product or any component part of a product and who places the product or any component part of the product in the stream of commerce.

(c) "Product liability action" means any action brought against a manufacturer or seller of a product, regardless of the substantive legal theory or theories on which the action is brought, for or on account of personal injury, death, or property damage caused by or resulting from the manufacture, construction, design, formula, installation, preparation, assembly, testing, packaging, labeling, or sale of any product, the failure to warn or protect against a danger or hazard in the use, misuse, or unintended use of any product, or the failure to provide proper instructions for the use of any product.

(d) "Seller" means a manufacturer, wholesaler, or retailer. (Subsection ~~(4)~~(3)(a) terminates January 1, 2031--sec. 15, Ch. 2, L. 2021.)"

NEW SECTION. **Section 3. Severability.** If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

NEW SECTION. **Section 4. Effective date.** [This act] is effective on passage and approval.

NEW SECTION. **Section 5. Applicability.** [This act] applies to claims that accrue on or after [the effective date of this act].

- END -

AMEND

MINUTES

MONTANA SENATE

68th LEGISLATURE - REGULAR SESSION

COMMITTEE ON (S) BUSINESS, LABOR, AND ECONOMIC AFFAIRS

Call to Order: Chair Jason Small-R, on February 02, 2023 at 8:31 AM, in 422

ROLL CALL

Members Present:	Sen. Jason Small, Chair (R) Sen. Willis Curdy, Vice Chair (D) Sen. Mark Noland, Vice Chair (R) Sen. Steve Fitzpatrick (R) Sen. Mike Fox (D) Sen. Bruce Gillespie (R) Sen. Walt Sales (R) Sen. Terry Vermeire (R)
Members Excused:	Sen. Jason Ellsworth (R) Sen. Christopher Pope (D)
Staff Present:	Daisy Rhodes, Secretary Erin Sullivan, Attorney

Audio Committees: These minutes are in outline form only. They provide a list of participants and a record of official action taken by the committee. The link to the audio recording of the meeting is available on the Legislative Branch website.

Committee Business Summary:

Hearing & Date Posted:

SB 165 01/31/2023
SB 178 01/31/2023
SB 209 01/31/2023
SB 216 01/31/2023
SB 236 01/31/2023

Executive Action:

HEARING ON SB 165 - Establishing a duty of cooperation relating to insurance policies

Opening Statement:

08:32:10 Sen. Barry Usher (R), SD 40, opened the hearing on SB 165, Establishing a duty of cooperation relating to insurance policies.

Proponent Testimony:

08:34:31 Charles Robison, Montana Chamber of Commerce (MtCoC) and Montana Manufacturing Association (MMA)

EXHIBIT(230202BUSa1)

08:38:38 Brad Dantic, Alps Property and Casualty Insurance Company

EXHIBIT(230202BUSa2)

08:45:04 Aimee Grmoljez, American Property and Casualty Insurers of America (APCIA)

08:47:07 Peter Strauss, Montana Self Insurers Association

08:47:39 Jessie Luther, Montana Hospital Association (MHA)

08:48:29 Cary Hegreberg, Montana Banker Association

08:49:09 John Iverson, Montana Tavern Association (MTA), and Independent Insurance Agents of Montana

08:51:04 Robert Phillips, self

08:57:31 Scott Tuxbury, self

Opponent Testimony:

09:00:41 Jim Hunt, Montana Trial Lawyers Association (MTLA)

09:04:38 Al Smith, Montana Trial Lawyers Association (MTLA)

09:10:46 Frank Cote, Commissioner of Security and Insurance Office

Informational Witness Testimony:

None

Questions from Committee:

09:14:22 Vice Chair Mark Noland

09:14:45 Charles Robison, MtCoC and MMA

09:16:19 Vice Chair Mark Noland

09:16:28 Aimee Grmoljez, APCIA

09:17:57 Vice Chair Willis Curdy

09:21:38 Aimee Grmoljez, APCIA

09:22:13 Vice Chair Willis Curdy

09:23:22 Al Smith, MTLA

09:24:10 Sen. Steve Fitzpatrick

09:26:46 Frank Cote, Commissioner of Security and Insurance Office

09:27:24 Vice Chair Mark Noland

09:30:12 Brad Dantic, Alps Insurance Agency

09:30:45 Sen. Steve Fitzpatrick

09:31:34 Brad Dantic, Alps Insurance Agency

09:32:14 Vice Chair Willis Curdy

09:32:53 Brad Dantic, Alps Insurance Agency

Closing Statement:

09:33:36 Sen. Barry Usher (R), SD 40, closed the hearing on SB 165.

HEARING ON SB 216 - Revise laws related to litigation and products

Opening Statement:

09:38:25 Sen. Steve Fitzpatrick (R), SD 10, opened the hearing on SB 216, Revise laws related to litigation and products.

Proponent Testimony:

09:47:17 Charles Robison, Montana Chamber of Commerce (MtCoC), and Montana Manufacturing Association (MMA)

EXHIBIT(230202BUSa3)

09:49:13 Lee Mickus, Montana Chamber of Commerce (MtCoC), and American Tort Reform Association (ATRA)

09:57:15 Bryan Wood, Wood's Power Grip

10:06:28 Ronda Wiggers, National Federation of Independent Business (NFIB)

10:07:54 Dan Brooks, Billings Chamber of Commerce

10:09:14 Ian McIntosh, American Property Casualty Insurance Association

Opponent Testimony:

10:12:55 Jim Hunt, Montana Trial Lawyers Association (MTLA)

10:20:20 Al Smith, Montana Trial Lawyers Association (MTLA)

10:28:33 Max Kirchhoff, Western Justice Associates

Informational Witness Testimony:

None

Questions from Committee:

10:36:18 Chair Jason Small

10:41:44 Al Smith, MTLA

10:42:07 Sen. Walt Sales

10:44:21 Sen. Steve Fitzpatrick-R

10:44:30 Vice Chair Willis Curdy

10:44:58 Sen. Steve Fitzpatrick-R

10:46:25 Vice Chair Willis Curdy

10:46:41 Sen. Steve Fitzpatrick-R

Closing Statement:

10:47:07 Sen. Steve Fitzpatrick (R), SD 10, closed the hearing on SB 216.

HEARING ON SB 178 - Generally revise cryptocurrency laws

Opening Statement:

10:49:26 Sen. Daniel Zolnikov (R), SD 45, opened the hearing on SB 178, Generally revise cryptocurrency laws.

Discussion:

EXHIBIT(230202BUSa4)

Proponent Testimony:

10:54:11 Dennis Porter, Satoshi Action Fund

11:01:05 Eric Perterson, Satoshi Action Fund

11:01:54 Henry Kriegel, Americans for Prosperity Montana (AFP-MT)

Opponent Testimony:

11:05:09 Thomas Jodoin, Montana League of Cities and Towns (MLCT)

11:09:00 Keegan Medrano, American Civil Liberties Union of Montana (ACLU)

Questions from Committee:

11:14:09 Vice Chair Mark Noland

11:15:13 Kegan Medrano, ACLU

Opponent Testimony:

11:15:35 Ann Hedges, Montana Environmental Information Center (MEIC)

EXHIBIT(230202BUSa5)

11:25:55 Gary Matson, self

Informational Witness Testimony:

None

Questions from Committee:

11:28:29 Chair Jason Small

11:29:12 Sen. Daniel Zolnikov-R

11:29:14 Vice Chair Willis Curdy

11:29:24 Anne Hedges, MEIC

11:30:15 Vice Chair Willis Curdy

11:32:13 Thomas Jodoin, MLCT

11:32:49 Vice Chair Mark Noland

11:38:12 Dennis Porter, Satoshi Action Fund

11:38:58 Chair Jason Small

11:43:45 Dennis Porter, Satoshi Action Fund

11:44:19 Vice Chair Willis Curdy

11:47:49 Anne Hedges, MEIC

11:49:16 Sen. Walt Sales

11:50:55 Sen. Daniel Zolnikov-R

Closing Statement:

11:52:25 Sen. Daniel Zolnikov (R), SD 45, closed the hearing on SB 178.

HEARING ON SB 209 - Revise laws relating to Montana distilleries

Opening Statement:

11:58:24 Sen. Greg Hertz (R), SD 12, opened the hearing on SB 209, Revise laws relating to Montana distilleries.

Proponent Testimony:

12:01:46 Jennifer Hensley, Montana Distillers Guild (MDG)

EXHIBIT(230202BUSa6)

EXHIBIT(230202BUSa7)

12:09:19 Courtney McKee, Headframe Spirits

EXHIBIT(230202BUSa8)

12:14:21 Ethan Kohoutek, Montana Brewers Association and Ten Mile Creek Brewery

12:14:59 Heidi Rosenleaf, Headframe Spirits

12:15:24 Amy Nerison, Liquor Store Owners Association of Montana, and on behalf of Beer and Wine Distributors of Montana

12:15:54 Ryan Montgomery, Montgomery Distillery

12:16:56 Willie Blazer, Willie's Distillery

12:17:37 Matt Melugin, Willie's Distillery

EXHIBIT(230202BUSa9)

12:17:52 Tyrrell Hibbard, Gulch Distillers

12:18:19 Carolina Balliew, Lakeside Distillery

EXHIBIT(230202BUSa10)

12:19:11 Steffen Rasile, Gulch Distillers

12:19:26 Nicolas Lee, Glacier Distilling

12:20:37 Erica Droge, Dryhouse Distillery

Opponent Testimony:

12:22:00 John Iverson, Montana Tavern Association (MTA)

EXHIBIT(230202BUSa11)

12:25:24 Mary Jane Heisler, Montana Tavern Association (MTA)

12:25:48 Tom Heisler, Montana Tavern Association (MTA)

Informational Witness Testimony:

12:26:21 Steve Swanson, Department of Revenue - Alcoholic Beverage Control Division

Questions from Committee:

12:26:47 Chair Jason Small

12:26:48 Jen Hensley, MDG

Closing Statement:

12:28:49 Sen. Greg Hertz (R), SD 12, closed the hearing on SB 209.

HEARING ON SB 236 - Establish time limited demand standards

Opening Statement:

12:31:50 Sen. Greg Hertz (R), SD 12, opened the hearing on SB 236, Establish time limited demand standards.

Proponent Testimony:

12:34:06 Charles Robison, Montana Chamber of Commerce (MtCoC)

EXHIBIT(230202BUSa12)

12:35:05 Brad Dantic, Alps Insurance Agency

12:36:47 Aimee Grmoljez, American Property and Casualty Insurance Association (APCIA) and on behalf of the Montana Hospital Association, Montana Bankers Association

12:37:18 John Iverson, Montana Tavern Association (MTA) and Independent Insurance Agents of Montana

12:37:35 Scott Tuxbury, self

Opponent Testimony:

None

Informational Witness Testimony:

None

Questions from Committee:

12:39:00 Vice Chair Willis Curdy

12:40:32 Brad Dantic, Alps Insurance Agency

12:41:07 Chair Jason Small

Closing Statement:

12:41:11 Sen. Greg Hertz (R), SD 12, closed the hearing on SB 236.

ADJOURNMENT

Adjournment: 12:42:33

_____

Daisy Rhodes, Secretary

Additional Documents:EXHIBIT(230202BUSaad)

SB216: Product Liability Reform

SENATE BUSINESS & LABOR
Exhibit No. 3
Date 2/2/23
Bill No. SB216

SB216 implements common sense reforms to current product liability law, protecting manufacturers and Montana businesses.

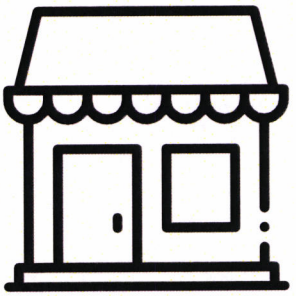
Montana's product liability law is one-sided and outdated in its approach. Current statute treats manufacturers and retailers alike, even though they act in very different capacities. This bill will establish reforms to allow additional evidence and defenses necessary for the fair treatment of manufacturers and retailers.

Creates comparative fault defense
Allows product sellers to show that another party contributed to the injury.

Strengthens product misuse defense
Product sellers to use the defense that the product was used contrary to an express warning or instruction that came with the product.

Creates defense for government safety regulation compliance
If the product complied with mandatory government safety regulations and requirements, this bill would allow that as a defense in court.

Creates 10-year statute of repose
This addition recognizes that most products have a limited useful life and wear out, so it is defensible if the product is over 10 years old. Reasonable exceptions remain.



Allows innocent-seller defense
If a retailer sells a product unchanged from the manufacturer, the innocent seller should not be held liable - the liability rests with the manufacturer. Reasonable exceptions remain.

Adds defense of no safer alternative
Products innovate quickly, but if there was no safer alternative in existence at the time of sale, the seller can raise that defense.

MONTANA CHAMBER OF COMMERCE | WE MEAN BUSINESS |

Montana State Legislature

2023 Session

Senate Additional Documents

May include the following:

- Business Report
- Roll Call -Attendance
- Standing Committee Reports
- Tabled Bills
- Fiscal Reports [if any]
- Roll Call Votes
- Proxies signed in ink
- Visitor's sign-in sheet.
- Informational Item's
- Witness Statements if any,
- Zoom/Internet Testimony Information & index
- All Public Testimony document(s) may or may not be scanned, but will be on file at the Montana Historical Society for your research.
- Any other type of documents such as:
  @ Petitions, {if any} Emails, all documents given to Committee Secretary before & after meeting.

The original exhibit/items are on file at the Montana Historical Society and may be viewed there.

Montana Historical Society Archives,
225 N. Roberts, Helena, MT 59620-1201
E-Document Specialist Susie Hamilton

BUSINESS REPORT

MONTANA SENATE

REGULAR

(S) Business, Labor, and Economic Affairs

Date: 02/02/2023 **Time:** 8:30 AM

Place: Capitol **Room:** 422

BILLS and RESOLUTIONS HEARD:

SB 165 Establishing a duty of cooperation relating to insurance policies - Sen. Barry Usher

SB 178 Generally revise cryptocurrency laws - Sen. Daniel Zolnikov

SB 209 Revise laws relating to Montana distilleries - Sen. Greg Hertz

SB 216 Revise laws related to litigation and products - Sen. Steve Fitzpatrick

SB 236 Establish time limited demand standards - Sen. Greg Hertz

EXECUTIVE ACTION TAKEN:

Comments:

Sen. Jason Small-R, Chair

Senate

Roll Call

(S) Business, Labor, and Economic Affairs

DATE: 02/02/2023
TIME: 8:30 AM

NAME	PRESENT	ABSENT/EXCUSED
Curdy, Willis	X	
Ellsworth, Jason		X
Fitzpatrick, Steve	X	
Fox, Mike	X	
Gillespie, Bruce	X	
Noland, Mark	X	
Pope, Christopher		X
Sales, Walt	X	
Small, Jason	X	
Vermeire, Terry	X	

MONTANA STATE SENATE
Visitors Register

BUSINESS, LABOR & ECONOMIC AFFAIRS **Date** 2/2/23

Bill No. SB 216 **Sponsor(s)** Sen Fitzpatrick

PLEASE PRINT **PLEASE PRINT** **PLEASE PRINT**

Name and Address	Representing	Support	Oppose	Inf.
Al Smith	MTTLA		X	
Lee Mickus	ATRA	X		
Charles Robison	MT Chamber	✓		
Bryan Wood	Wood's Power Grip	✓		
Sean Slanger	Montana Defense Trial Lawyers	✓		
Anne Gerhuser	APCIA	X		
Randa Veliquette	NFIB	X		

Please leave prepared testimony with Secretary. Witness Statement forms are available if you care to submit written testimony.

MONTANA STATE SENATE
Visitors Register

BUSINESS, LABOR & ECONOMIC AFFAIRS **Date** 2/2/23

Bill No. SB165 **Sponsor(s)** Sen Usher

PLEASE PRINT **PLEASE PRINT** **PLEASE PRINT**

Name and Address	Representing	Support	Oppose	Inf.
Al Smith	MTLA		X	
Brad Dantic	ALPS	X		
Charles Robison	MT Chamber	✓		
Peter Strauss	MT Self-Insurers	X		
Eric Peterson	Satoshi action fund	X		
Dennis Porter	Satoshi action fund	✓		
Anne Gruner	APCIA	X		
Jim Hunt	MTLA		X	
Cary Hegreberg	MT Bankers	X		
Greg Van Horssen	State Farm	X		
Brian Spears	NAMIC	X		
John Iverson	MTA	X		
John Iverson	Independent Insurance Agents	X		
Jesse Luther	MHA	X		

Please leave prepared testimony with Secretary. Witness Statement forms are available if you care to submit written testimony.

MONTANA STATE SENATE
Visitors Register

BUSINESS, LABOR & ECONOMIC AFFAIRS **Date** 2/2/23

Bill No. SB178 **Sponsor(s)** Sen. Zolnikov

PLEASE PRINT **PLEASE PRINT** **PLEASE PRINT**

Name and Address	Representing	Support	Oppose	Inf.
Keegan Medrano	ACLU-MT		X	
THOMAS JODOIN	MCCT		X	
Henry Kriegel	AFP-MT	X		
Andy Hedges	MEIC		X	
Dennis Pistel	SAF	X		
Eric Peterson				X

Please leave prepared testimony with Secretary. Witness Statement forms are available if you care to submit written testimony.

MONTANA STATE SENATE
Visitors Register

BUSINESS, LABOR & ECONOMIC AFFAIRS **Date** 2/2/23

Bill No. SB209 **Sponsor(s)** Sen. Hertz

PLEASE PRINT **PLEASE PRINT** **PLEASE PRINT**

Name and Address	Representing	Support	Oppose	Inf.
Courtney McKee Butte	Headframe	X		
Heidi Rosenleaf Butte	Headframe	X		
Ryan Montgomery	Montgomery	X		
Tom Meister	MTA		X	
Mary Jane Heiels	MTA		X	
~~Amee Grantier~~	~~MCA~~	X		
JEN HENSLEY	MT Distillers Gld	X		
John Iverson	MTA		X	
Amy Nerison	LSOAM	X		
Steffen Rasile Helena	Gulch Distillers	X		
Caroline Balliew	Lakeside Distillery	X		
~~Matt Melvin~~	~~Willies Distillery~~	X		
Tyrrell Hibbard Helena	Gulch Distillers	X		
Willie BLAZER	Willie Distillery	X		
Debra Pitassy	MBWDA	X		
Steve Swenson	MT/DEPT. OF REV			X
Ethan Schwartz	MBA	X		

Please leave prepared testimony with Secretary. Witness Statement forms are available if you care to submit written testimony.

MONTANA STATE SENATE
Visitors Register

BUSINESS, LABOR & ECONOMIC AFFAIRS **Date** 2/2/23

Bill No. SB236 **Sponsor(s)** Sen Hertz

PLEASE PRINT **PLEASE PRINT** **PLEASE PRINT**

Name and Address	Representing	Support	Oppose	Inf.
Brad Dantic	ALPS	X		
Charles Robison	MT chamber	✓		
Amelia Rouser	APCIA	X		
Greg VanHorssen	State Farm	X		
Brice Spence	NAMIC	X		
Cary Hegreberg	MT Bankers	X		
John Fanguy	MTA	X		
John Iverson	Independent Insurance Agents	X		
Jesse Luther	MHA	X		

Please leave prepared testimony with Secretary. Witness Statement forms are available if you care to submit written testimony.

Date	Committee	H/S	Bill #	Position	Requester Name	Location	Email	Phone	Affiliation	Comments	Past Deadline
2/2/23	BUS	SB	165	Proponent	Scott Tuxbury	Trout Creek, MT	[redacted]	[redacted]	N/A		
2/2/23	BUS	SB	165	Proponent	Robert J Phillips	Missoula, MT	[redacted]	[redacted]	N/A		
2/2/23	BUS	SB	178	Opponent	Gary Matson	Milltown, MT	[redacted]	[redacted]	N/A		
2/2/23	BUS	SB	209	Proponent	Jim Harris	Bozeman, MT	[redacted]	[redacted]	Montana Distillers Guild and Bozeman Spirits		
2/2/23	BUS	SB	209	Proponent	Nicolas Lee	West Glacier, MT	[redacted]	[redacted]	N/A		
2/2/23	BUS	SB	216	Proponent	Dan Brooks	Billings, Mt	[redacted]	[redacted]	Billings Chamber of Commerce		
2/2/23	BUS	SB	216	Proponent	Ian McIntosh	Bozeman, MT	[redacted]	[redacted]	APCIA		
2/2/23	BUS	SB	216	Opponent	Maxwell Kirchhoff	Bozeman, MT	[redacted]	[redacted]	Western Justice Associates, PLLC		
2/2/23	BUS	SB	223	Proponent	Tracey Murrish	Billings, MT	[redacted]	[redacted]	Billings Clinic		
2/2/23	BUS	SB	236	Proponent	Scott Tuxbury	Trout Creek, Mt	[redacted]	[redacted]	N/A		

Additional Documents
SENATE: Business & Labor
Date: 2/2
Bill No. SB165

Business , Labor and Economic Affairs Committee

Montana Senate

Sen. Jason Small, Chair

Re **SB 165**

January 27, 2023

Dear Sen. Small and Honorable committee members,

I write to inform this committee of the legal, economic and practical effect of the portion of this bill which would eliminate an insurers legal duty of good faith to third-party claimants.

As in nearly every state, Montana has long recognized that the *protection* purpose of insurance is destroyed by practices that deliberately and in "bad faith" exploit the vulnerability of claimants who are incapacitated by an accidental injury and who are under the financial pressure of devastating medical expenses. The duty imposed by the rule is not onerous, nor does it attach to any case where there is reasonable defenses. The rule simply provides that, in cases of clear liability, the insurer must make "good faith" attempt to effectuate a **fair** and equitable settlement.

Section 2 of S.B. 165 would eliminate this duty. In short the legislature would be saying that even in cases of crystal clear liability, an insurance company is allowed to act in bad faith, to exploit and leverage the claimant, and that the insurer cannot be held accountable for even the most malicious and exploitive tactics.

I am attaching to this letter an op-ed piece that describes how, *even with the current law in place,* insurers are strategically and intentionally breaching the duty to attempt settlement of clear liability cases because of the profits it can make while claim settlement delayed. There is a multi billion dollar financial market for these claims. That market is built on the expressly stated premise of "time-value" of delayed settlements. Offshore companies in the Cayman islands and other private equity investors are investing in this strategy:

1.deny claimants what they are clearly due ;

2. force the claimants to clog the courts with unnecessary litigation and,

3. when the judgment finally is paid, the insurer will have made **more money** on investments during the delay than the amount of the liability itself.

In legal terms this strategy means that Montana courts will be clogged up with unnecessary litigation for decades.

In practical terms this means that an offshore investment entity is using money that is clearly owed to a person who needs it for an oxygen machine, as investment capital. It is literally a strategy to make investments dependent on the length of human suffering.

Investment in Suffering

Mr. X has been waiting many years for a settlement of his claim for severe asbestosis. He will die soon. There is little chance he will receive payment for the medical care that he needs in the end stage of this suffocating disease. The claim can't be timely settled because it was retroactively acquired by a private equity investment fund that received a hundreds of millions of dollars to take over asbestosis claims. It is an investment that only yields a profit if claims like his can be delayed while the firm exploits the "float" between claim acquisition and claim resolution. For Mr. X, the investment strategy requires that he suffer needlessly even though liability on his claim is indisputable.

The investment scheme masquerades under the genteel phrase "retroactive reinsurance," but it is not insurance at all. It is a base and inhumane vehicle for turning a human ordeal into a commodity.

Insurance and reinsurance make up a valuable and essential system for society and economies by spreading the risk of serious or catastrophic loss from fortuitous events. But, by its definition and essential function, insurance cannot be retroactive because the fortuity has already occurred. The claim has been presented. The known loss has become a liability for existing, though unliquidated, personal injury damages.

Most people have had to present insurance claims, and many have experienced the frustration of delays. But true insurance is a highly regulated industry. Laws of every state provide protection to the claimant, and impose duties of timely acceptance coverage, prompt communication, good faith and reasonable claim resolution where liability is clear. In contrast, a private equity investment firm is not an insurer. Its sole duty is to its investors, and, when the investment is in pending claims, the primary way to maximize profit is to increase the delay so that the period of "float" is extended.

For a person like Mr. X, who is in the final months of his illness, the settlement of his clear liability claim is not responsive to insurance claim handling regulation. Instead, like any other investment commodity, the claim investment responds to market forces and the profit objectives of an investment entity far removed from the purpose of insurance to provide protection for insurable risk. As one analyst explains, "There is a third-party commercial market for these transactions, and several such deals have been consummated. In return for assuming the liability, the buyer receives a substantial cash premium, and transfer or assignment of any existing insurance proceeds. Typically, the loss portfolio is isolated, and converted or sold into a litigation shell owned and operated by the third-party buyer." *Private Equity Wants To Buy Your Asbestos Liabilities,* Stephen Hoke, Law360 and Products Liability360, October 31, 2019.

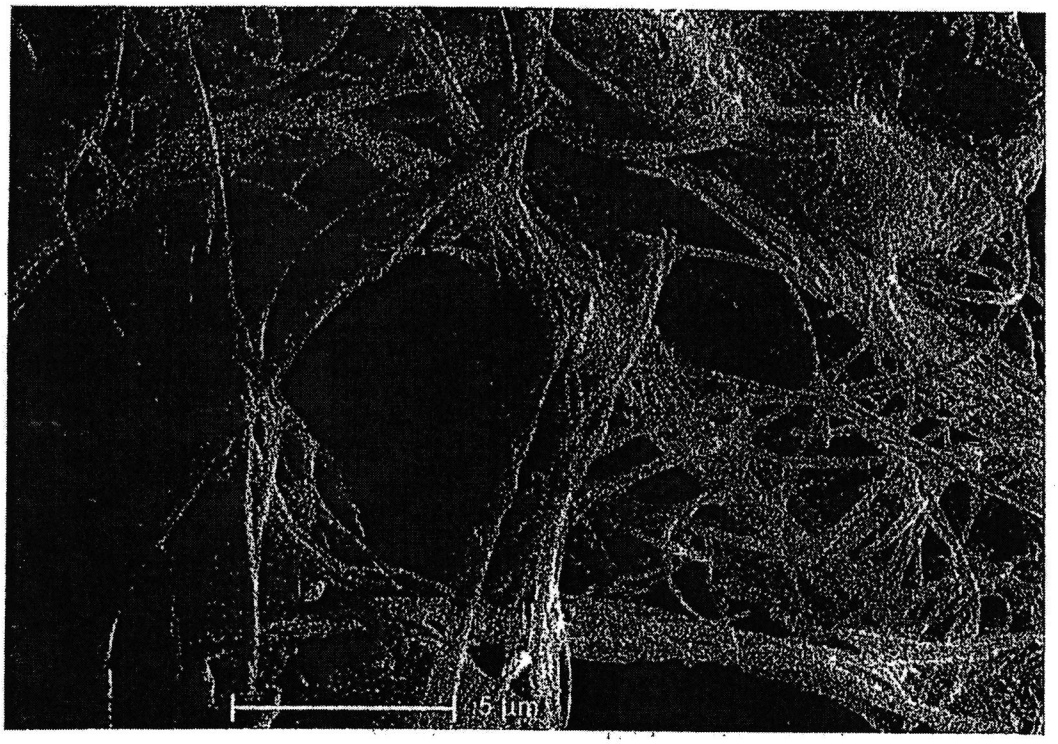
The legal question of the permissibility of systematic incentives for delayed claim handling under the guise of "retroactive' reinsurance is being tested in courts. The greater

Daily **Montanan**

ENVIRONMENT
JUSTICE

Federal lawsuit claims insurance company deliberately stalling in Libby asbestos cases

BY: DARRELL EHRLICK - JANUARY 22, 2023 9:18 AM



☐ A scanning photography of asbestos (Photo by Getty Images).

bellwether case. Because his case was so convincing, the attorney Clifford Edwards argues that Zurich had the desire to make sure justice – and payments – were delayed, in part to discourage other claims.

"Specifically Zurich used leveraging designed to exploit Hutt's vulnerable position through withheld medical expense and low-ball offers," the suit said.

Representatives from Zurich declined comment on the case for this story.

The lawsuit claims Zurich had plenty of reason to delay a settlement or drag out court proceedings: If Hutt's case was successful, it would establish a precedent for similar cases, and a court record replete with facts and documents.

While Hutt went through several years of litigation, Zurich denied claims, including support for basic healthcare service, for example, supplemental oxygen.

Part of the case is buttressed by a decision by the Montana State Supreme Court last year when the state's highest court determined that Maryland Casualty had breached its duty in a scathing rebuke from Chief Justice Mike McGrath:

> "Maryland Casualty Company was not merely negligent in its failure to act; rather, in strategically recognizing the latency period for asbestosis to develop, MCC engaged in affirmative actions to conceal the asbestos exposure risk and worker injuries to avoid liability, effectively increasing the risk of additional harm to mill workers from further asbestos exposure."

The suit claimed by playing a sort of legal hardball with Hutt, that Zurich could be lessening liability. Because Hutt's case was the first of its type, if Hutt had settled, it would have likely left Zurich in a better bargaining position for other cases. This created a high-stakes game in court while Hutt struggled to get out of the house because of his advanced lung disease likely caused by asbestos exposure, court documents said.

"At an average annual rate of return in excess of 11%, Zurich has earned hundreds of millions of dollars on the Libby asbestos claim reserves for fully accrued clear

MINUTES

MONTANA SENATE

68th LEGISLATURE - REGULAR SESSION

COMMITTEE ON (S) BUSINESS, LABOR, AND ECONOMIC AFFAIRS

Call to Order: Chair Jason Small-R, on February 10, 2023 at 8:30 AM, in 422

ROLL CALL

Members Present:	Sen. Jason Small, Chair (R) Sen. Willis Curdy, Vice Chair (D) Sen. Mark Noland, Vice Chair (R) Sen. Mike Fox (D) Sen. Bruce Gillespie (R) Sen. Walt Sales (R) Sen. Terry Vermeire (R)
Members Excused:	Sen. Jason Ellsworth (R) Sen. Steve Fitzpatrick (R) Sen. Christopher Pope (D)
Staff Present:	Daisy Rhodes, Secretary Erin Sullivan, Attorney

Audio Committees: These minutes are in outline form only. They provide a list of participants and a record of official action taken by the committee. The link to the audio recording of the meeting is available on the Legislative Branch website.

Committee Business Summary:

Hearing & Date Posted:

SB 243 02/06/2023
SB 263 02/06/2023
SB 264 02/06/2023

Executive Action:

SB 22 DO PASS AS AMENDED
SB 165 DO PASS AS AMENDED
SB 178 DO PASS AS AMENDED
SB 211 DO PASS AS AMENDED
SB 216 DO PASS
SB 223 TO TABLE
SB 236 DO PASS AS AMENDED
SB 244 DO PASS AS AMENDED
SB 270 DO PASS AS AMENDED
SB 263 DO PASS

HEARING ON SB 263 - Allow airport authorities to enter into certain contracts for 50 years

Opening Statement:

08:31:26 Sen. Keith Regier (R), SD 3, opened the hearing on SB 263, Allow airport authorities to enter into certain contracts for 50 years.

Proponent Testimony:

08:32:28 Tom Ebzery, Montana Airport Managers Association (MAMA)

08:34:57 Ian McKay, Montana Airport Managers Association (MAMA)

08:38:05 Ross Marty, Montana Airport Managers Association (MAMA) and the Helena Regional Airport

Opponent Testimony:

None

Informational Witness Testimony:

08:40:31 Tim Conway, Director of Aeronautics, Montana Department of Transportation (MDT)

Questions from Committee:

08:40:57 Sen. Bruce Gillespie

08:42:15 Tom Ebzery. MAMA

08:42:52 Sen. Walt Sales

08:43:17 Ian McKay, MAMA

08:44:01 Vice Chair Willis Curdy

08:47:09 Ross Marty, MAMA

08:47:45 Sen. Walt Sales

08:48:08 Ross Marty, MAMA

Closing Statement:

08:49:35 Sen. Keith Regier (R), SD 3, closed the hearing on SB 263.

HEARING ON SB 264 - Revise airport all-beverage license laws

Opening Statement:

08:50:24 Sen. Keith Regier (R), SD 3, opened the hearing on SB 264, Revise airport all-beverage license laws.

Proponent Testimony:

08:51:26 Tom Ebzery, Montana Airport Managers Association (MAMA)

08:54:16 Ian McKay, Montana Airport Managers Association (MAMA)

08:57:07 Ross Marty, Montana Airport Managers Association (MAMA)

Opponent Testimony:

None

Informational Witness Testimony:

08:59:21 Tim Conway, Director of Aeronautics, Montana Department of Transportation (MDT)

08:59:41 Becky Schlauch, Alcohol and Beverage Control Commission, Montana Department of Revenue (DOR-ABC)

Questions from Committee:

09:00:11 Chair Jason Small

09:00:31 Becky Schlauch, DOR-ABC

09:00:51 Vice Chair Willis Curdy

09:03:15 Becky Schlauch, DOR-ABC

Closing Statement:

09:03:53 Sen. Keith Regier (R), SD 3, closed the hearing on SB 264.

HEARING ON SB 243 - Prohibit discrimination in real-estate sector based on free speech and religion

Opening Statement:

09:05:28 Sen. Keith Regier (R), SD 3, opened the hearing on SB 243, Prohibit discrimination in real-estate sector based on free speech and religion.

Proponent Testimony:

09:08:00 Matthew Monforton, self

EXHIBIT(230210BUSa1)

09:15:27 Brandon Huber, self

09:22:01 Donna Elford, Lewis and Clark Republican Women

EXHIBIT(230210BUSa2)

09:24:24 Sarah Bauer, self

EXHIBIT(230210BUSa3)

EXHIBIT(230210BUSa4)

09:29:03 Steve Netschert, self

EXHIBIT(230210BUSa5)

09:31:44 Jacob (Joey) Duwe, self

09:34:20 Sen. Theresa Manzella, Senate District 44

09:37:53 Lance Kinzer, First Amendment Partnership

09:48:07 Constance Neumann, self

Opponent Testimony:

09:50:53 Sam Sill, Montana Association of Realtors (MAR)

09:55:42 Robert Erickson, Montana Association of Realters (MAR)

EXHIBIT(230210BUSa6)

10:07:55 Adrian Jawort, self

10:11:44 Dr. Angelina Gonzalez-Aller, Montana Human Rights Network (MHRN)

Informational Witness Testimony:

None

Questions from Committee:

10:15:25	Sen. Bruce Gillespie
10:15:54	Joey Duwe
10:16:20	Chair Jason Small
10:16:36	Sam Sill, MAR
10:16:55	Chair Jason Small
10:17:17	Vice Chair Mark Noland
10:25:42	Sam Sill, MAR
10:26:29	Vice Chair Mark Noland
10:27:18	Matthew Monfortin
10:29:36	Vice Chair Willis Curdy
10:30:23	Brandon Huber
10:32:31	Vice Chair Willis Curdy
10:34:08	Sam Sill, MAR
10:34:38	Vice Chair Mark Noland
10:35:24	Steve Netschert
10:37:35	Sen. Walt Sales
10:37:53	Matthew Monfortin

Closing Statement:

10:39:23 Sen. Keith Regier (R), SD 3, closed the hearing on SB 243.

10:41:16 **Discussion of Amendment to SB 178**

10:42:22 Erin Sullivan

10:43:23 Sen. Zolnikov

10:46:09 Chair Jason Small

10:48:46 **Recessed**

11:17:35 **Reconvened**

EXECUTIVE ACTION ON SB 22 - Generally revise independent contractor laws

11:17:57 **Motion:** Vice Chair Mark Noland moved that **SB 22 DO PASS.**

11:18:03 **Motion:** Vice Chair Mark Noland moved that **SB 22 BE AMENDED.**

12:27:38 **Vote:** Motion carried unanimously by voice vote.

11:19:23 **Motion:** Vice Chair Mark Noland moved that **SB 22 DO PASS AS AMENDED.**

12:27:38 **Vote:** Motion carried unanimously by voice vote.

EXECUTIVE ACTION ON SB 165 - Establishing a duty of cooperation relating to insurance policies

11:19:52 **Motion:** Vice Chair Mark Noland moved that **SB 165 DO PASS.**

11:20:00 **Motion:** Vice Chair Mark Noland moved that **SB 165 BE AMENDED.**

Discussion:

11:20:25 Chair Jason Small

11:21:02 Erin Sullivan

12:27:38 **Vote:** Motion carried 7 - 3 by roll call vote with Sen. Curdy, Sen. Fox, Sen. Pope, voting no.
Sen. Pope, By Proxy

11:23:23 **Motion:** Vice Chair Willis Curdy moved that **SB 165 DO PASS AS AMENDED.**

12:27:38 **Vote:** Motion carried 7 - 3 by roll call vote with Sen. Curdy, Sen. Fox, Sen. Pope, voting no.
Sen. Pope, By Proxy

EXECUTIVE ACTION ON SB 178 - Generally revise cryptocurrency laws

11:24:27 **Motion:** Vice Chair Mark Noland moved that **SB 178 DO PASS.**

11:24:31 **Motion:** Vice Chair Mark Noland moved that **SB 178 BE AMENDED.**

Discussion:

11:25:02 Vice Chair Willis Curdy

11:26:08 Vice Chair Mark Noland

11:26:51 Chair Jason Small

12:27:38 **Vote:** Motion carried 8 - 2 by roll call vote with Sen. Curdy, Sen. Pope, voting no.
Sen. Pope, By Proxy

11:28:26 **Motion:** Vice Chair Mark Noland moved that **SB 178 DO PASS AS AMENDED.**

12:27:38 **Vote:** Motion carried 8 - 2 by roll call vote with Sen. Curdy, Sen. Pope, voting no.
Sen. Pope, By Proxy

EXECUTIVE ACTION ON SB 211 - Article V convention commissioner selection and credentialing act

11:29:18 **Motion:** Vice Chair Mark Noland moved that **SB 211 DO PASS.**

11:29:21 **Motion:** Vice Chair Mark Noland moved that **SB 211 BE AMENDED.**

Discussion:

11:29:48 Sen. Walt Sales

12:27:38 **Vote:** Motion carried unanimously by roll call vote.

11:31:15 **Motion:** Vice Chair Mark Noland moved that **SB 211 DO PASS AS AMENDED.**

12:27:38 **Vote:** Motion carried 7 - 3 by roll call vote with Sen. Curdy, Sen. Fox, Sen. Pope, voting no.
Sen. Pope, By Proxy

EXECUTIVE ACTION ON SB 216 - Revise laws related to litigation and products

11:32:06 **Motion:** Vice Chair Mark Noland moved that **SB 216 DO PASS.**

12:27:38 **Vote:** Motion carried 7 - 3 by roll call vote with Sen. Curdy, Sen. Fox, Sen. Pope, voting no.
Sen. Pope, By Proxy

EXECUTIVE ACTION ON SB 223 - Establish requirements for insurance coverage of clinician-administered drugs

11:33:12 **Motion:** Vice Chair Mark Noland moved that **SB 223 DO PASS.**

Discussion:

11:33:19 Chair Jason Small

11:33:36 Vice Chair Mark Noland

11:33:50 Vice Chair Willis Curdy

12:27:38 **Vote:** Motion failed unanimously by voice vote.

11:43:58 **Motion:** Vice Chair Mark Noland moved that **SB 223 TO TABLE.**

12:27:38 **Vote:** Motion carried unanimously by voice vote.

EXECUTIVE ACTION ON SB 236 - Establish time limited demand standards

11:35:31 **Motion:** Vice Chair Mark Noland moved that **SB 236 DO PASS.**

11:36:09 **Motion:** Vice Chair Mark Noland moved that **SB 236 BE AMENDED.**

Discussion:

11:37:02 Vice Chair Mark Noland

11:37:07 Vice Chair Willis Curdy

12:27:38 **Vote:** Motion carried unanimously by voice vote.

11:37:49 **Motion:** Vice Chair Mark Noland moved that **SB 236 DO PASS AS AMENDED.**

12:27:38 **Vote:** Motion carried unanimously by voice vote.

EXECUTIVE ACTION ON SB 244 - Revise laws related to internships in funeral homes

11:38:39 **Motion:** Vice Chair Mark Noland moved that **SB 244 DO PASS.**

11:38:43 **Motion:** Vice Chair Mark Noland moved that **SB 244 BE AMENDED.**

12:27:38 **Vote:** Motion carried unanimously by voice vote.

11:39:27 **Motion:** Vice Chair Mark Noland moved that **SB 244 DO PASS AS AMENDED.**

12:27:38 **Vote:** Motion carried unanimously by voice vote.

EXECUTIVE ACTION ON SB 270 - Prohibit employee termination for legal social media posts

11:40:09 **Motion:** Vice Chair Mark Noland moved that **SB 270 DO PASS.**

11:40:15 **Motion:** Vice Chair Mark Noland moved that **SB 270 BE AMENDED.**

12:27:38 **Vote:** Motion carried unanimously by voice vote.

11:41:13 **Motion:** Vice Chair Mark Noland moved that **SB 270 DO PASS AS AMENDED.**

Discussion:

11:41:30 Chair Jason Small

12:27:38 **Vote:** Motion carried unanimously by voice vote.

EXECUTIVE ACTION ON SB 263 - Allow airport authorities to enter into certain contracts for 50 years

11:42:13 **Motion:** Vice Chair Mark Noland moved that **SB 263 DO PASS.**

12:27:38 **Vote:** Motion carried unanimously by voice vote.

ADJOURNMENT

Adjournment: 11:44:36

_____

Trudy Burke, Secretary

Additional Documents:EXHIBIT(230210BUSaad)

Montana State Legislature

2023 Session

Additional Senate Documents

- Business Report
- Roll Call -Attendance
- Standing Committee Reports
- Tabled Bills
- Fiscal Reports [if any]
- Roll Call Votes
- Proxies signed in ink
- Visitor's sign-in sheet.
- Informational Item's
- Witness Statements if any,
- Zoom/Internet Testimony Information & index
- Any other type of documents such as:
  @ Petitions, {if any} Emails, all documents given to Committee Secretary before & after meeting.
- Public Testimony documents may or may not be scanned, they will be on file at the Montana Historical Society.
- Disclaimer: within the online minutes document you will see vacate spaces within the document. The LAWS II system creates these blank areas they are not loss of information.

The original exhibit/items are on file at the Montana Historical Society and may be viewed there.

Montana Historical Society Archives,
225 N. Roberts, Helena, MT 59620-1201
E-Document Specialist Susie Hamilton

BUSINESS REPORT

MONTANA SENATE

REGULAR

(S) Business, Labor, and Economic Affairs

Date: 02/10/2023 **Time:** 8:30 AM

Place: Capitol **Room:** 422

BILLS and RESOLUTIONS HEARD:

SB 243 Prohibit discrimination in real-estate sector based on free speech and religion - Sen. Keith Regier

SB 263 Allow airport authorities to enter into certain contracts for 50 years - Sen. Keith Regier

SB 264 Revise airport all-beverage license laws - Sen. Keith Regier

EXECUTIVE ACTION TAKEN:

SB 165:

SB 165 Do Pass as Amended

SB 178:

SB 178 Do Pass as Amended

SB 211:

SB 211 Do Pass as Amended

SB 216:

SB 216 Do Pass

SB 22:

SB 22 Do Pass as Amended

SB 223:

SB 223 To Table

SB 236:

SB 236 Do Pass as Amended

SB 244:

SB 244 Do Pass as Amended

SB 263:

SB 263 Do Pass

SB 270:

SB 270 Do Pass as Amended

Comments:

Sen. Jason Small-R, Chair

Senate

Roll Call

(S) Business, Labor, and Economic Affairs

DATE: 02/10/2023
TIME: 8:30 AM

NAME	PRESENT	ABSENT/EXCUSED
Curdy, Willis	X	
Ellsworth, Jason		X
Fitzpatrick, Steve		X
Fox, Mike	X	
Gillespie, Bruce	X	
Noland, Mark	X	
Pope, Christopher		X
Sales, Walt	X	
Small, Jason	X	
Vermeire, Terry	X	

Senate Standing Committee Report

February 10, 2023

To the President,

We, your committee on **(S) Business, Labor, and Economic Affairs** report that **Senate Bill 165** (first reading copy – white) **Do Pass as Amended**. The referenced amendment is SB0165.001.001.

Signed: Jason Small

Sen. Jason Small-R, Chair

-End-

Committee Vote:

Yes 7, No 3

SENATE BILL NO. 165

INTRODUCED BY B. USHER

A BILL FOR AN ACT ENTITLED: "AN ACT ESTABLISHING A DUTY OF COOPERATION OF AN INSURED OR A THIRD-PARTY CLAIMANT TOWARD AN INSURER WHEN DEALING WITH CLAIMS AND SEEKING RECOVERY OF BENEFITS UNDER AN INSURANCE POLICY; PROVIDING THAT A BREACH OF THE DUTY MAY BE ASSERTED BY AN INSURER AS AN AFFIRMATIVE DEFENSE TO ANY CAUSE OF ACTION AGAINST AN INSURER UNDER SECTION 33-18-242, MCA, OR COMMENCED BY AN INSURED OR THIRD-PARTY CLAIMANT THAT ALLEGES THE INSURER'S BREACH OF CONTRACT OR THE INSURER'S BREACH OF THE IMPLIED COVENANT OF GOOD FAITH AND FAIR DEALING; ALLOWING AN INSURER TO INTRODUCE EVIDENCE CONCERNING AN INSURED'S OR THIRD-PARTY CLAIMANT'S CONDUCT IN ANY CAUSE OF ACTION AGAINST AN INSURER UNDER SECTION 33-18-242, MCA, OR THAT ALLEGES THE INSURER'S BREACH OF CONTRACT OR THE INSURER'S BREACH OF THE IMPLIED COVENANT OF GOOD FAITH AND FAIR DEALING; AMENDING SECTION 33-18-242, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

WHEREAS, it is the public policy of this state that, when liability is reasonably clear and insurance coverage exists, the prompt, fair, and equitable settlement of insurance claims are encouraged as beneficial to claimants, policyholders, insurers, and all citizens of this state; and

WHEREAS, this public policy benefits the citizens of this state because it promotes prompt, fair, and equitable settlements of insurance claims and reduces the nature, extent, and duration of costly litigation in the courts of this state; and

WHEREAS, this public policy is not promoted when an insured or a third-party claimant fails to act fairly toward an insurer and fails to cooperate when making, reporting, presenting, or delivering insurance claims or settlement demands to insurers; and

WHEREAS, it is the public policy of this state that both insured policyholders and insurers doing business in this state are entitled to a fair and reasonable opportunity to fairly investigate and evaluate

insurance claims based on reasonably available and supporting documents, records, and information regarding the insurance claim.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. **Section 1. Insured and third-party claimant's duties -- affirmative defense.** (1) An insured or a third-party claimant shall cooperate with an insurer with respect to an insurance claim or cause of action made or asserted against ~~an~~ the insured, the insurer, or both, or reported ~~or delivered to an insurer under an insurance policy issued by~~ to the insurer. The duty to cooperate includes, in addition to other duties specified in the insurance policy, the duty to comply with the reasonable requests of the insurer in the investigation and handling of the insurance claim.

(2) An insured or a third-party claimant shall deliver claim information to the insurer to allow the insurer a fair and reasonable opportunity to investigate and evaluate each claim made against an insured, insurer, or both, or reported ~~or delivered to an insurer under an insurance policy issued by~~ to the insurer.

(3) A breach of any of the duties of an insured or a third-party claimant set forth in this section does not create a separate or independent cause of action by an insurer against an insured or a third-party claimant, but the breach of a duty may be:

(a) considered as evidence regarding whether the insurer had an opportunity to conduct a reasonable investigation based on the reasonably available claim information and whether the insurer had a reasonable basis in law or in fact for contesting the claim or the amount of the claim; and

(b) asserted by an insurer as an affirmative defense to a cause of action commenced by an insured or a third-party claimant under 33-18-242 for an insurer's alleged violation of 33-18-201(4), (5) or (6), or commenced by an insured or a third-party claimant that alleges the insurer's breach of contract or the insurer's breach of the implied covenant of good faith and fair dealing.

(4) An insurer may introduce any evidence ~~otherwise admissible~~ in a civil action ~~in the state~~ regarding the actions, inactions, and other conduct of an insured or a third-party claimant in a civil action commenced by an insured or a third-party claimant with respect to a claim or cause of action under 33-18-242

for an insurer's alleged violation of 33-18-201(4), (5) or (6), or commenced by an insured or a third-party claimant that alleges the insurer's breach of contract or the insurer's breach of the implied covenant of good faith and fair dealing.

(5) For the purposes of this section, the following definitions apply:

(a) (i) "Claim information" means documents, records, or information created, maintained, or stored in a media format that is reasonably available to an insured or a third-party claimant and that relates to, establishes, ~~or~~ proves, or may tend to establish or prove:

(A) damages of any kind or nature relating to the claim or cause of action against the insured, insurer, or both; and

(B) the liability of the insured, insurer, or both to pay, satisfy, or otherwise compensate for the damages as provided in subsection (5)(a)(i)(A).

(ii) The term includes information that is reasonably available to an insured or a third-party claimant only if the claim information is in the possession of the insured or third-party claimant, or their representatives or attorneys, or if the claim information can be reasonably obtained by the insured or third-party claimant on request.

~~(b) "Claimant" means a third-party claimant making, alleging, or pursuing an insurance claim or cause of action against an insured for damages, or against an insurer pursuant to 33-18-242, together with and including an attorney or any other authorized representative acting for or on behalf of the third-party claimant or any assignee of a third-party claimant.~~

~~(c)~~(b) "Insured" means an ~~insured~~ individual or entity insured under an insurance policy, against whom a third-party claimant is making, alleging, or pursuing an insurance claim or cause of action for damages, or an ~~insured~~ individual or entity making, alleging, or pursuing a claim or cause of action ~~arising from or related in any manner to~~ for which coverage may be provided by the insurance policy issued by the insurer to the ~~insured, together with and including an attorney or any other authorized representative acting for or on behalf of an insured or any assignee of an insured~~ individual or entity.

(c) "Third-party claimant" means a third party making, alleging, or pursuing an insurance claim or cause of action against an insured for damages, or against an insurer pursuant to 33-18-242. For purposes of

this definition, the term also means an attorney or any other authorized representative acting for or on behalf of the third-party claimant or any assignee of the third-party claimant.

Section 2. Section 33-18-242, MCA, is amended to read:

"**33-18-242. Independent cause of action -- burden of proof.** (1) An insured or a third-party claimant has an independent cause of action against an insurer for actual damages caused by the insurer's violation of ~~subsection (1), (4), (5), (6), (9), or (13) of~~ 33-18-201(1), (4), (5), (6), (9), or (13).

(2) In an action under this section, a plaintiff is not required to prove that the violations were of such frequency as to indicate a general business practice.

(3) An insured who has suffered damages as a result of the handling of an insurance claim may bring an action against the insurer for breach of the insurance contract, for fraud, or pursuant to this section, but not under any other theory or cause of action. An insured may not bring an action for bad faith in connection with the handling of an insurance claim.

(4) A third-party claimant who has suffered damages as a result of the handling of an insurance claim may bring an action against the insurer for fraud or pursuant to this section, but not under any other theory or cause of action. A third-party claimant may not bring an action for bad faith in connection with the handling of an insurance claim.

~~(4)~~(5) In an action under this section, the court or jury may award such damages as were proximately caused by the violation of ~~subsection (1), (4), (5), (6), (9), or (13) of~~ 33-18-201(1), (4), (5), (6), (9), or (13). Exemplary damages may also be assessed in accordance with 27-1-221.

~~(5)~~(6) An insurer may not be held liable under this section if the insurer had a reasonable basis in law or in fact for contesting the claim or the amount of the claim, whichever is in issue.

~~(6)~~(7) (a) An insured may file an action under this section, together with any other cause of action the insured has against the insurer. Actions may be bifurcated for trial where justice so requires.

(b) A third-party claimant may not file an action under this section until after the underlying claim has been settled or a judgment entered in favor of the claimant on the underlying claim.

~~(7)~~(8) The period prescribed for commencement of an action under this section is:

(a) for an insured, within 2 years from the date of the violation of 33-18-201; and

(b) for a third-party claimant, within 1 year from the date of the settlement of or the entry of judgment on the underlying claim.

~~(8)~~(9) As used in this section, an insurer includes a person, firm, or corporation utilizing self-insurance to pay claims made against them."

NEW SECTION. **Section 2. Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 33, chapter 18, part 2, and the provisions of Title 33, chapter 18, part 2, apply to [section 1].

NEW SECTION. **Section 3. Saving clause.** [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

NEW SECTION. **Section 4. Effective date.** [This act] is effective on passage and approval.

- END -

AMEND

Senate Standing Committee Report

February 10, 2023

To the President,

We, your committee on **(S) Business, Labor, and Economic Affairs** report that **Senate Bill 178** (first reading copy – white) **Do Pass as Amended**. The referenced amendment is SB0178.001.002.

Signed: Jason Small

Sen. Jason Small-R, Chair

-End-

Committee Vote:

Yes 8, No 2

SENATE BILL NO. 178

INTRODUCED BY D. ZOLNIKOV

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING CRYPTOCURRENCY LAWS; PROHIBITING DISCRIMINATORY DIGITAL ASSET MINING UTILITY RATES; PROHIBITING LOCAL GOVERNMENT POWERS RELATED TO DIGITAL ASSET MINING; PROHIBITING TAXATION ON THE USE OF CRYPTOCURRENCY AS A PAYMENT METHOD; PROVIDING FOR DIGITAL ASSETS AS PERSONAL PROPERTY; AMENDING SECTIONS 7-1-111, 15-1-101, AND 70-1-108, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

WHEREAS, digital asset mining provides positive economic value for individuals and companies throughout the United States; and

WHEREAS, digital asset mining has often faced difficulty with regulations at the state and local level; and

WHEREAS, the State of Montana wants to protect the right of individuals and businesses to mine digital assets and create legal certainty for the digital asset mining industry; and

WHEREAS, digital asset mining has the potential to stabilize the grid and provide revenue for infrastructure upgrades statewide.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. **Section 1. Digital asset mining ratemaking.** (1) The commission may not establish a rate classification for digital asset mining, digital asset mining businesses, or home digital asset mining that creates unduly discriminatory rates.

(2) For the purposes of this section, the following definitions apply:

(a) "Data center" means a use involving a building or premises in which the majority of the use is occupied by computers, telecommunications, or related equipment, including supporting equipment, where

information is processed, transferred, and stored.

(a) "Digital asset mining" means the use of electricity to power a computer for the purpose of securing a blockchain network.

(b) "Digital asset mining business" means a group of computers working at a single site that consume more than 1 megawatt of energy on an average annual basis for the purpose of generating digital assets by securing a blockchain network.

(c) "Discriminatory rates" means electricity rates substantially different from other ~~industrial~~ similar uses of electricity in similar geographic areas after accounting for the load profile and cost of service.

(d) "Home digital asset mining" means mining digital assets in areas zoned for residential use that consume less than 1 megawatt of energy on an average annual basis for the purpose of generating digital assets by securing a blockchain network.

NEW SECTION. **Section 2. Digital assets taxation.** ~~A state or local government entity may not charge an additional tax, withholding, assessment, or charge on the value of digital assets when used as a method of payment.~~(1) Digital assets used as a method of payment may not be subject to any additional tax, withholding, assessment, or charge by the state or a local government that is based solely on the use of the digital asset as the method of payment.

(2) Nothing in this section prohibits the state or a local government from imposing or collecting a tax, withholding, assessment, or charge otherwise authorized by Titles 15 or 16.

Section 3. Section 7-1-111, MCA, is amended to read:

"**7-1-111. Powers denied.** A local government unit with self-government powers is prohibited from exercising the following:

(1) any power that applies to or affects any private or civil relationship, except as an incident to the exercise of an independent self-government power;

(2) any power that applies to or affects the provisions of 7-33-4128 or Title 39, except that subject to those provisions, it may exercise any power of a public employer with regard to its employees;

(3) any power that applies to or affects the public school system, except that a local unit may impose an assessment reasonably related to the cost of any service or special benefit provided by the unit and shall exercise any power that it is required by law to exercise regarding the public school system;

(4) any power that prohibits the grant or denial of a certificate of compliance or a certificate of public convenience and necessity pursuant to Title 69, chapter 12;

(5) any power that establishes a rate or price otherwise determined by a state agency;

(6) any power that applies to or affects any determination of the department of environmental quality with regard to any mining plan, permit, or contract;

(7) any power that applies to or affects any determination by the department of environmental quality with regard to a certificate of compliance;

(8) any power that defines as an offense conduct made criminal by state statute, that defines an offense as a felony, or that fixes the penalty or sentence for a misdemeanor in excess of a fine of $500, 6 months' imprisonment, or both, except as specifically authorized by statute;

(9) any power that applies to or affects the right to keep or bear arms;

(10) any power that applies to or affects a public employee's pension or retirement rights as established by state law, except that a local government may establish additional pension or retirement systems;

(11) any power that applies to or affects the standards of professional or occupational competence established pursuant to Title 37 as prerequisites to the carrying on of a profession or occupation;

(12) except as provided in 7-3-1105, 7-3-1222, 7-21-3214, or 7-31-4110, any power that applies to or affects Title 75, chapter 7, part 1, or Title 87;

(13) any power that applies to or affects landlords, as defined in 70-24-103, when that power is intended to license landlords or to regulate their activities with regard to tenants beyond what is provided in Title 70, chapters 24 and 25. This subsection is not intended to restrict a local government's ability to require landlords to comply with ordinances or provisions that are applicable to all other businesses or residences within the local government's jurisdiction.

(14) subject to 7-32-4304, any power to enact ordinances prohibiting or penalizing vagrancy;

(15) subject to 80-10-110, any power to regulate the registration, packaging, labeling, sale, storage, distribution, use, or application of commercial fertilizers or soil amendments, except that a local government may enter into a cooperative agreement with the department of agriculture concerning the use and application of commercial fertilizers or soil amendments. This subsection is not intended to prevent or restrict a local government from adopting or implementing zoning regulations or fire codes governing the physical location or siting of fertilizer manufacturing, storage, and sales facilities.

(16) subject to 80-5-136(10), any power to regulate the cultivation, harvesting, production, processing, sale, storage, transportation, distribution, possession, use, and planting of agricultural seeds or vegetable seeds as defined in 80-5-120. This subsection is not intended to prevent or restrict a local government from adopting or implementing zoning regulations or building codes governing the physical location or siting of agricultural or vegetable seed production, processing, storage, sales, marketing, transportation, or distribution facilities.

(17) any power that prohibits the operation of a mobile amateur radio station from a motor vehicle, including while the vehicle is in motion, that is operated by a person who holds an unrevoked and unexpired official amateur radio station license and operator's license, "technician" or higher class, issued by the federal communications commission of the United States;

(18) subject to 76-2-240 and 76-2-340, any power that prevents the erection of an amateur radio antenna at heights and dimensions sufficient to accommodate amateur radio service communications by a person who holds an unrevoked and unexpired official amateur radio station license and operator's license, "technician" or higher class, issued by the federal communications commission of the United States;

(19) any power to require a fee and a permit for the movement of a vehicle, combination of vehicles, load, object, or other thing of a size exceeding the maximum specified in 61-10-101 through 61-10-104 on a highway that is under the jurisdiction of an entity other than the local government unit;

(20) any power to enact an ordinance governing the private use of an unmanned aerial vehicle in relation to a wildfire;

(21) any power as prohibited in 7-1-121(2) affecting, applying to, or regulating the use, disposition, sale, prohibitions, fees, charges, or taxes on auxiliary containers, as defined in 7-1-121(5);

(22) any power that provides for fees, taxation, or penalties based on carbon or carbon use in accordance with 7-1-116;

(23) any power to require an employer, other than the local government unit itself, to provide an employee or class of employees with a wage or employment benefit that is not required by state or federal law;

(24) any power to enact an ordinance prohibited in 7-5-103 or a resolution prohibited in 7-5-121 and any power to bring a retributive action against a private business owner as prohibited in 7-5-103(2)(d)(iv) and 7-5-121(2)(c)(iv); ~~or~~

(25) any power to prohibit the sale of alternative nicotine products or vapor products as provided in 16-11-313(1);

(26) any power to impose requirements on a digital asset mining business as defined in [section 1] that are not also requirements for data centers in its area of jurisdiction.;

(27) any power to prevent home digital asset mining as defined in [section 1] at a private residence, except as related to existing noise or lighting ordinances; or

(28) any power to change the zoning of ~~an area that contains an active digital asset mining business as defined in [section 1]~~ any parcel or lot that contains an active digital asset mining business or adjacent parcels owned or controlled by an active digital asset mining business as defined in [section 1] or prevent a digital asset mining business from operating in an area zoned for industrial use."

Section 4. Section 15-1-101, MCA, is amended to read:

"**15-1-101. Definitions.** (1) Except as otherwise specifically provided, when terms mentioned in this section are used in connection with taxation, they are defined in the following manner:

(a) The term "agricultural" refers to:

(i) the production of food, feed, and fiber commodities, livestock and poultry, bees, biological control insects, fruits and vegetables, and sod, ornamental, nursery, and horticultural crops that are raised, grown, or produced for commercial purposes; and

(ii) the raising of domestic animals and wildlife in domestication or a captive environment.

(b) The term "assessed value" means the value of property as defined in 15-8-111.

Senate Standing Committee Report

February 10, 2023

To the President,

We, your committee on **(S) Business, Labor, and Economic Affairs** report that **Senate Bill 211** (first reading copy – white) **Do Pass as Amended**. The referenced amendment is SB0211.001.001.

Signed: _____

Sen. Jason Small-R. Chair

-End-

Committee Vote:

Yes 7, No 3

SENATE BILL NO. 211

INTRODUCED BY T. MCGILLVRAY

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR APPOINTMENT, LIMITATIONS, INSTRUCTION, AND PENALTIES FOR COMMISSIONERS REPRESENTING THE STATE OF MONTANA AT AN ARTICLE V CONVENTION CALLED BY THE UNITED STATES CONGRESS TO PROPOSE AMENDMENTS TO THE UNITED STATES CONSTITUTION; PROVIDING PENALTIES; AND PROVIDING DEFINITIONS."

WHEREAS, Article V of the United States Constitution obligates Congress to call a convention for proposing amendments on the application of two-thirds of the several states; and

WHEREAS, the momentum for an Article V convention is growing to address fiscal excesses and jurisdictional encroachments by the federal government on state-reserved powers; and

WHEREAS, the voters of the State of Montana have made their preference for federal term limits known through the passage of Constitutional Initiative Measure No. 64 in 1992 with 67% approval; and

WHEREAS, the courts have struck down term limits for federal officials and an Article V convention to propose a term limit amendment is gaining momentum with the people.

THEREFORE, the Legislature of the State of Montana finds that it is appropriate to prepare for an eventual, if not imminent, Article V convention by providing for the appointment, limitations, instructions, and penalties for commissioners representing this state at an Article V convention.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. **Section 1. Definitions.** As used in [sections 1 through 10], the following definitions apply:

(1) "Article V application" means a joint resolution adopted by the legislature on the same subject or subjects as two-thirds of the other states requiring the United States congress to call an Article V convention.

(2) "Article V convention" means a convention for proposing amendments to the United States

constitution as provided in Article V of the United States constitution.

(3) "Commissioner" means a person appointed as provided in [section 2] to represent the state at an Article V convention.

(4) "Delegation" means the group of commissioners appointed under [section 2].

(5) "Legislative instructions" means instructions given to the delegation before or during an Article V convention by the appointing authorities under [section 2(2)] or by the appointing authorities' agent designated for that purpose.

(6) "Unauthorized proposed amendment" means a proposed amendment that is outside the subject matter of the Article V application, outside the subject matter of the narrowest application relied on by the United States congress in calling the convention if the legislature did not make the application, or contrary to legislative instructions.

NEW SECTION. **Section 2. Appointment of commissioners -- vacancies.** (1) On a call by the United States congress for an Article V convention, ~~five~~ seven commissioners must be appointed to represent the state at the convention as provided in this section.

(2) The commissioners are appointed as follows:

(a) two commissioners by the speaker of the house of representatives~~,~~; and

(b) one commissioner each by the house majority leader, the president of the senate, ~~and~~ the senate majority leader ~~shall each appoint one commissioner~~, the house minority leader, and the senate minority leader. ~~The four appointed commissioners shall appoint the fifth commissioner by majority vote.~~

(3) (a) Each commissioner appointed pursuant to subsection (2) must be approved by a majority vote of each house of the legislature. If a commissioner fails to receive a majority vote in both houses, a new commissioner must be appointed in the same manner as the original appointment.

(b) If the legislature is not in session during the appointment process the secretary of state shall poll the members of the legislature by mail for approval of the commissioners.

(4) A vacancy in the delegation due to death, resignation, ineligibility, recall, or any other reason must be filled in the same manner as the original appointment.

(5) The vote of the delegation on a proposed amendment at an Article V convention must be agreed by a majority vote of the commissioners.

NEW SECTION. **Section 3. Prohibition on unauthorized proposed amendments.** (1) A commissioner may not vote to allow consideration of or vote to approve an unauthorized proposed amendment to the United States constitution.

(2) A commissioner casting a vote to allow consideration or approval of an unauthorized proposed amendment must be immediately recalled by the appointing authority or the speaker of the house of representatives.

(3) A commissioner who is recalled is not entitled to compensation or expenses as provided in [section 9].

NEW SECTION. **Section 4. Qualifications.** Commissioners must be current or former state legislators.

NEW SECTION. **Section 5. Oath.** On approval by a majority vote of both the house of representatives and the senate, each commissioner shall be required to take the following oath: "I do solemnly swear or affirm that to the best of my abilities, I will, as a commissioner of the state of Montana to an Article V convention, uphold the constitution and laws of the United States and the state of Montana. I will not propose or vote to allow consideration of or approve any unauthorized proposed amendment to the United States constitution. I will vote for convention rules that provide that each state have one vote."

NEW SECTION. **Section 6. Penalty.** A commissioner who violates the oath or affirmation provided in [section 5] shall be fined an amount not less than $500 or more than $5,000 to be levied by the secretary of state and deposited in the state general fund.

NEW SECTION. **Section 7. Convention rules.** (1) Each commissioner shall support a rule that gives

each state one equal vote at the Article V convention.

(2) Each commissioner shall support a rule prohibiting a state or commissioner from proposing an amendment that is outside the subject matter of the approved call of the convention.

(3) Each commissioner shall oppose a rule that would allow the rules under subsections (1) and (2) to be suspended by a majority or supermajority vote.

NEW SECTION. **Section 8. Certification.** The secretary of state shall certify in writing to the Article V convention the appointment of commissioners, the recall of commissioners, the filling of a vacancy in the delegation, and the nullification of a vote cast by a commissioner in violation of [sections 1 through 10].

NEW SECTION. **Section 9.** ~~**Expenses**~~**Compensation -- expenses.** After an Article V convention is called by the United States congress, the state shall provide for the reasonable compensation and expenses of the delegation for planning meetings, the Article V convention, and up to ~~three~~ four staff members or advisors of the delegation's choosing.

NEW SECTION. **Section 10. Term.** Except on the resignation, death, ineligibility, recall, or other vacation of office by a commissioner, the term of each commissioner must be for the duration of the Article V convention for which the commissioner was appointed, and the delegation must be dissolved and disbanded on the adjournment sine die of the Article V convention.

NEW SECTION. **Section 11. Codification instruction.** [Sections 1 through 10] are intended to be codified as a new ~~chapter~~ part in Title 5, chapter 5, and the provisions of Title 5, chapter 5, apply to [sections 1 through 10].

NEW SECTION. **Section 12. Severability.** If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Senate Standing Committee Report

February 10, 2023

To the President,

We, your committee on **(S) Business, Labor, and Economic Affairs** report that **Senate Bill 216** (first reading copy – white) **Do Pass**.

Signed: _____

Sen. Jason Small-R, Chair

-End-

Committee Vote:

Yes 7, No 3

Senate Standing Committee Report

February 10, 2023

To the President,

We, your committee on **(S) Business, Labor, and Economic Affairs** report that **Senate Bill 22** (first reading copy – white) **Do Pass as Amended**. The referenced amendment is SB0022.001.002.

Signed: Jason Small

Sen. Jason Small-R, Chair

-End-

Committee Vote:

Yes 10, No 0

SENATE BILL NO. 22

INTRODUCED BY S. MORIGEAU

BY REQUEST OF THE ECONOMIC AFFAIRS INTERIM COMMITTEE

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING INDEPENDENT CONTRACTOR LAWS; PROVIDING DEPARTMENT ANALYSIS RELATING TO THE EMPLOYMENT STATUS OF A PERSON; REVISING LAWS RELATED TO INDEPENDENT CONTRACTOR EXEMPTION CERTIFICATES; REQUIRING DEPARTMENT ANALYSIS IN CERTAIN CIRCUMSTANCES; AND AMENDING ~~SECTIONS 39-51-203, 39-71-417, AND~~ SECTION 39-71-419, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. **Section 1. Independent contractor analysis.** ~~(1) The employment status of a person is determined by subsection (2) if the person does not have an independent contractor exemption certificate and:~~

~~(a) the person represents to a hiring agent that they have an independent contractor exemption certificate;~~

~~(b) the person applied for an independent contractor exemption certificate prior to the event triggering a department investigation;~~

~~(c) the person provided the hiring agent a forged independent contractor exemption certificate;~~

~~(d) the hiring agent contacted the department and was informed the person was an independent contractor;~~

~~(e) the person's independent contractor exemption certificate expires during the working relationship; or~~

~~(f) the person induced the hiring agent to commence the working relationship based on the worker's status as an independent contractor.~~

~~(2) The department shall investigate whether, as to the particular hiring agent:~~

~~(a) the person was free from direction and control in the performance of services; and~~

~~(b) the person was engaged in an independently established trade, occupation, profession, or business.~~

~~(3) A person found to meet the requirements of subsection (2) is an independent contractor.~~

~~**Section 2.** Section 39-51-203, MCA, is amended to read:~~

~~"**39-51-203. Employment defined.** (1) "Employment", subject to other provisions of this section, means service by an individual, by a manager or member of a limited liability company treated as a corporation pursuant to 39-51-207, or by an officer of a corporation, including service in interstate commerce, performed for wages or under any contract of hire, written or oral, express or implied.~~

~~(2) (a) The term "employment" includes an individual's entire service performed within or both within and outside this state if:~~

~~(i) the service is localized in this state; or~~

~~(ii) the service is not localized in any state but some of the service is performed in this state and:~~

~~(A) the base of operations or, if there is no base of operations, the place from which the service is directed or controlled is in this state; or~~

~~(B) the base of operations or the place from which the service is directed or controlled is not in any state in which some part of the service is performed, but the individual's residence is in this state.~~

~~(b) Service is considered to be localized within a state if:~~

~~(i) the service is performed entirely within the state; or~~

~~(ii) the service is performed both within and outside the state, but the service performed outside the state is incidental to the individual's service within the state; for example, the out-of-state service is temporary or transitory in nature or consists of isolated transactions.~~

~~(3) Service not covered under subsection (2) and performed entirely outside the state and on which contributions are neither required nor paid under an unemployment insurance law of any other state or of the federal government is considered to be employment subject to this chapter if the individual performing the services is a resident of this state and the department approves the election of the employing unit for whom the~~

~~services are performed in order that the entire service of the individual is considered to be employment subject to this chapter.~~

~~(4) Service performed by an individual for wages is considered to be employment subject to this chapter until it is shown to the satisfaction of the department that the individual is an independent contractor. An individual may not be determined to be an employee based solely on not having an independent contractor exemption certificate.~~

~~(5) The term "employment" includes service performed by an individual in the employ of this state or any of its instrumentalities (or in the employ of this state and one or more other states or their instrumentalities) for a hospital or institution of higher education located in this state. The term "employment" includes service performed by all individuals, including those individuals who work for the state of Montana, its universities, public schools, components or units of universities or public schools, or any local government unit and one or more other states or their instrumentalities or political subdivisions whose services are compensated by salary or wages.~~

~~(6) The term "employment" includes service performed by an individual in the employ of a religious, charitable, scientific, literary, or educational organization.~~

~~(7) (a) The term "employment" includes the service of an individual who is a citizen of the United States performed outside the United States, except in Canada, in the employ of an American employer, other than service that is considered employment under the provisions of subsection (2) or the parallel provisions of another state's law, if:~~

~~(i) the employer's principal place of business in the United States is located in this state;~~

~~(ii) the employer has no place of business in the United States, but:~~

~~(A) the employer is an individual who is a resident of this state;~~

~~(B) the employer is a corporation that is organized under the laws of this state; or~~

~~(C) the employer is a partnership or a trust and the number of the partners or trustees who are residents of this state is greater than the number who are residents of any other state; or~~

~~(iii) none of the criteria of subsections (7)(a)(i) and (7)(a)(ii) are met, but the employer has elected coverage in this state or, the employer having failed to elect coverage in any state, the individual has filed a~~

~~claim for benefits based on the service under the law of this state.~~

~~(b) An "American employer", for purposes of this subsection (7), means a person who is:~~

~~(i) an individual who is a resident of the United States;~~

~~(ii) a partnership if two-thirds or more of the partners are residents of the United States;~~

~~(iii) a trust if all of the trustees are residents of the United States; or~~

~~(iv) a corporation organized under the laws of the United States or of any state."~~

Section 1. Section 39-71-417, MCA, is amended to read:

"**39-71-417. Independent contractor certification.** (1) (a) (i) Except as provided in subsection (1)(a)(ii), a person who regularly and customarily performs services at a location other than the person's own fixed business location shall apply to the department for an independent contractor exemption certificate unless the person has elected to be bound personally and individually by the provisions of compensation plan No. 1, 2, or 3.

(ii) An officer or manager who is exempt under 39-71-401(2)(r)(iii) or (2)(r)(iv) may apply, but is not required to apply, to the department for an independent contractor exemption certificate.

(b) A person who meets the requirements of this section and receives an independent contractor exemption certificate is not required to obtain a personal workers' compensation insurance policy.

(c) For the purposes of this section, "person" means:

(i) a sole proprietor;

(ii) a working member of a partnership;

(iii) a working member of a limited liability partnership;

(iv) a working member of a member-managed limited liability company; or

(v) a manager of a manager-managed limited liability company that is engaged in the work of the construction industry as defined in 39-71-116.

(2) The department shall adopt rules relating to an original application for or renewal of an independent contractor exemption certificate. The department shall adopt by rule the amount of the fee for an application or certificate renewal. The application or renewal must be accompanied by the fee.

(3) The department shall deposit the application or renewal fee in an account in the state special revenue fund to pay the costs of administering the program.

(4) (a) To obtain an independent contractor exemption certificate, the applicant shall swear to and acknowledge the following:

(i) that the applicant has been and will continue to be free from control or direction over the performance of the person's own services, both under contract and in fact; and

(ii) that the applicant is engaged in an independently established trade, occupation, profession, or business and will provide sufficient documentation of that fact to the department.

(b) For the purposes of subsection (4)(a)(i), an endorsement required for licensure, as provided in 37-47-303, does not imply or constitute control.

(5) (a) An applicant for an independent contractor exemption certificate shall submit an application under oath on a form prescribed by the department and containing the following:

(i) the applicant's name and address;

(ii) the applicant's social security number;

(iii) each occupation for which the applicant is seeking independent contractor certification; and

(iv) other documentation as provided by department rule to assist in determining if the applicant has an independently established business.

(b) The department shall adopt a retention schedule that maintains copies of documents submitted in support of an initial application or renewal application for an independent contractor exemption certificate for a minimum of 3 years after an application has been received by the department. The department shall, to the extent feasible, produce renewal applications that reduce the burden on renewal applicants to supply information that has been previously provided to the department as part of the application process.

(c) An applicant who applies on or after July 1, 2011, to renew an independent contractor exemption certificate is not required to submit documents that have been previously submitted to the department if:

(i) the applicant certifies under oath that the previously submitted documents are still valid and current; and

(ii) the department, if it considers it necessary, independently verifies a specific document or decides that a document has not expired pursuant to the document's own terms and is therefore still valid and current.

(6) The department shall issue an independent contractor exemption certificate to an applicant if the department determines that an applicant meets the requirements of this section.

(7) (a) When the department approves an application for an independent contractor exemption certificate and the person is working under the independent contractor exemption certificate, the person's status is conclusively presumed to be that of an independent contractor. ~~Except as provided in [section 1], a person who does not have an independent contractor exemption certificate but is required to have one is conclusively presumed to be an employee.~~

(b) A person working under an approved independent contractor exemption certificate has waived all rights and benefits under the Workers' Compensation Act and is precluded from obtaining benefits unless the person has elected to be bound personally and individually by the provisions of compensation plan No. 1, 2, or 3.

(c) For the purposes of the Workers' Compensation Act, a person is working under an independent contractor exemption certificate if:

(i) the person is performing work in the trade, business, occupation, or profession listed on the person's independent contractor exemption certificate; and

(ii) the hiring agent and the person holding the independent contractor exemption certificate do not have a written or an oral agreement that the independent contractor exemption certificate holder's status with respect to that hiring agent is that of an employee.

(d) A person without an independent contractor exemption certificate is rebuttably presumed to be an independent contractor when:

(i) the person represents to a hiring entity or individual in writing that the person has an independent contractor exemption certificate;

(ii) the person provides the hiring entity or individual a forged or otherwise fraudulent independent contractor exemption certificate; or

(iii) the person's independent contractor exemption certificate expires while the person is working under the contract and prior to full performance of the contract, for a period not to exceed 120 days following the expiration of the certificate.

(e) The department shall utilize the considerations set forth in subsections (4)(a)(i) and (4)(a)(ii) for any evaluation conducted under subsection (7)(d).

(8) Once issued, an independent contractor exemption certificate remains in effect for 2 years unless:

(a) suspended or revoked pursuant to 39-71-418; or

(b) canceled by the independent contractor.

(9) If the department's independent contractor central unit denies an application for an independent contractor exemption certificate, the applicant may contest that decision as provided in 39-71-415(2)."

~~**Section 4.** Section 39-71-419, MCA, is amended to read:~~

~~"**39-71-419. Independent contractor violations -- penalty.** (1) A person may not:~~

~~(a) perform work as an independent contractor without first:~~

~~(i) obtaining from the department an independent contractor exemption certificate unless the individual is not required to obtain an independent contractor exemption certificate pursuant to 39-71-417(1)(a); or~~

~~(ii) electing to be bound personally and individually by the provisions of compensation plan No. 1, 2, or 3;~~

~~(b) perform work as an independent contractor when the department has revoked or denied the independent contractor's exemption certificate;~~

~~(c) transfer to another person or allow another person to use an independent contractor exemption certificate that was not issued to that person;~~

~~(d) alter or falsify an independent contractor exemption certificate; or~~

~~(e) misrepresent the person's status as an independent contractor. A person who falsely claimed,~~

~~either in writing or through credible evidence, to have an independent contractor certification may not be considered to be an employee solely based on not actually having an independent contractor exemption certificate. The burden of proof that an independent contractor is certified rests with the independent contractor and not the hiring entity.~~

~~(2) An employer may not:~~

~~(a) require an employee through coercion, misrepresentation, or fraudulent means to adopt independent contractor status to avoid the employer's obligations to provide workers' compensation coverage; or~~

~~(b) exert control to a degree that causes the independent contractor to violate the provisions of 39-71-417(4).~~

~~(3) In addition to any other penalty or sanction provided in this chapter, a person or employer who violates a provision of this section is subject to a fine to be assessed by the department of up to $1,000 for each violation. The department shall deposit the fines in the uninsured employers' fund. The lien provisions of 39-71-506 apply to any assessed fines.~~

~~(4) A person or employer who disputes a fine assessed by the department pursuant to this section may file an appeal with the department within 30 days of the date on which the fine was assessed. If, after mediation, the issue is not resolved, the issue must be transferred to the workers' compensation court for resolution."~~

~~NEW SECTION.~~ **~~Section 5. Codification instruction.~~** ~~[Section 1] is intended to be codified as an integral part of Title 39, chapter 71, part 4, and the provisions of Title 39, chapter 71, part 4, apply to [section 1].~~

- END -

Senate Standing Committee Report

February 10, 2023

To the President,

We, your committee on **(S) Business, Labor, and Economic Affairs** report that **Senate Bill 236** (first reading copy – white) **Do Pass as Amended**. The referenced amendment is SB0236.001.001.

Signed: Jason Small

Sen. Jason Small-R, Chair

-End-

Committee Vote:

Yes 10, No 0

SENATE BILL NO. 236

INTRODUCED BY G. HERTZ

A BILL FOR AN ACT ENTITLED: "AN ACT ESTABLISHING STANDARDS TO BE SATISFIED BY A THIRD-PARTY CLAIMANT WHEN DELIVERING A WRITTEN TIME-LIMITED DEMAND TO AN INSURER; REQUIRING A THIRD-PARTY CLAIMANT TO DELIVER ALL AVAILABLE AND SUPPORTING DOCUMENTS, RECORDS, AND INFORMATION TO AN INSURER WHEN DELIVERING A TIME-LIMITED DEMAND; PROVIDING A FAIR AND REASONABLE OPPORTUNITY FOR AN INSURER TO TIMELY INVESTIGATE AND EVALUATE CLAIMS PRESENTED TO THE INSURER WITHOUT THE RISK OR EXPOSURE OF HAVING AN UNFAIR CLAIM SETTLEMENT PRACTICES OR INSURANCE BAD FAITH CLAIM ALLEGED AGAINST THE INSURER OR UNREASONABLY CREATING ADDITIONAL LIABILITY EXPOSURE TO THE INSURER BEYOND THE LIMITS OF LIABILITY SET FORTH IN THE INSURANCE POLICY; AND PROMOTING FAIR AND REASONABLE SETTLEMENT OF CLAIMS WHILE ALLOWING INSURERS A REASONABLE OPPORTUNITY TO INVESTIGATE AND EVALUATE CLAIMS AND TO PROMPTLY AND FAIRLY SETTLE CLAIMS TO PROTECT POLICYHOLDERS."

WHEREAS, it is declared to be the public policy of this state that fair, reasonable, and prompt settlements of civil actions and claims are encouraged as beneficial to claimants, policyholders, insurers, and all citizens of this state; and

WHEREAS, the public policy of this state is not promoted by the making, presenting, or delivering of claims or settlement demands to insurers without all available and supporting documents, records, and information reasonably necessary and appropriate for an insurer to timely, fairly, and reasonably investigate and evaluate the claims or settlement demands; and

WHEREAS, both insured policyholders and insurers doing business in this state are entitled to a fair and reasonable opportunity to timely and fairly investigate and evaluate claims presented without the risk or exposure of having an unfair claim settlement practices or insurance bad faith claim asserted against the insurer or unreasonably creating additional liability exposure to the insurer beyond the limits of liability set forth

in the insurance policy; and

WHEREAS, this policy benefits the citizens of this state because it promotes fair, reasonable, and prompt settlements of claims, and reduces the nature, extent, and duration of costly litigation in the courts of this state, while allowing insurers a reasonable opportunity to investigate and evaluate claims and to reasonably and fairly settle claims to protect policyholders and claimants.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. **Section 1. Time-limited demands -- requirements -- insurer's fair and reasonable opportunity to investigate and evaluate claims.** (1) A time-limited demand from a claimant to an insurer offering to settle any claim must:

(a) reference this section;

(b) be in writing and labeled "time sensitive" at the top of the first page of the writing setting forth the required material terms of the offer to settle set forth in subsection (1)(d);

(c) be sent certified mail, return-receipt requested, to the insurer of the allegedly responsible party; and

(d) contain the following material terms:

(i) the name of the allegedly responsible party;

(ii) the time period within which the offer to settle shall remain open for acceptance by the allegedly responsible party's insurer, which may not be less than 60 days or the first business day following the 60th day when that day falls on a weekend or holiday;

(iii) the amount of the monetary payment requested to settle the claim, together with a description of any other form of consideration sought to settle the claim;

(iv) the date and location of the damage, loss, professional negligence, or breach of fiduciary duty;

(v) a reasonable description of the nature and extent of all known injuries, damages, and losses sustained by the claimant;

(vi) the party or parties to be released if the insurer accepts the time-limited demand;

(vii) a description of the claim or claims to be released if the time-limited demand is accepted; and

(viii) disclosure of eligibility, or information sufficient to verify eligibility, for medicare, medicaid, any other federal or state benefit program, and any other known liens or assignments granted by the claimant that apply to any of the damages claimed.

(2) The time period within which an insurer may accept a time-limited demand commences on the date the insurer actually receives the time-limited demand through certified mail.

(3) (a) A time-limited demand made pursuant to this section must be accompanied and supported by the following:

(i) all available and supporting documents, records, and information sufficient to allow the insurer a fair and reasonable opportunity to investigate and evaluate the nature and extent of the alleged responsible party's liability and the nature and extent of the claimant's injuries, damages, and losses;

(ii) medical records, invoices, and billing statements from all health care providers, if any, who provided treatment to or evaluated the claimant or decedent for:

(A) injuries suffered in connection with the claim from the date of injury until the date of the time-limited demand, including but not limited to emotional distress; and

(B) injuries, damages, losses, ailments, diseases, or other medical conditions occurring or existing prior to the date of injury that relate or may relate in any manner to any of the claimant's claims that are the subject of the written time-limited demand.

(b) If the claimant asserts a claim for loss of wages, earnings, compensation, or profits, however denominated, the claimant shall provide records from employers or other relevant sources or tax records to document the claimed loss.

(4) On receipt of a time-limited demand, the insurer has the right to provide a proposed settlement agreement or release, or both, or seek clarification or additional information regarding terms, liens, subrogation claims, alleged damages, standing to release claims, medical bills, medical records, preexisting medical conditions, and other relevant facts. The claimant has the duty to provide any missing or needed documents, records, and information reasonably requested by the insurer. A request for clarification or for additional documents, records, or information, or to propose a settlement agreement or release, or both, may not be

deemed a counteroffer or rejection of the time-limited demand to settle. On a request or proposal, any time limit imposed within the time-limited demand is extended a minimum of either 30 days, or by the number of days from and including the date of the request to the date of receipt of the information responding to the requestor, whether the terms of a settlement agreement, a release, or both, are accepted or rejected.

(5) If, during the time period within which a time-limited demand may be accepted, it is determined that a lien attaches to any settlement payment to be paid by the allegedly responsible party's insurer, including but not limited to any actual or potential medicare or medicaid lien, the claimant has a duty to cooperate with the insurer to ensure satisfaction of any valid lien interest medicare, medicaid, or other lienholder may have in the settlement payment. In addition, any time limit imposed within the time-limited demand must be stayed from date the valid lien is identified until the date on which the claimant, allegedly responsible party, and the insurer agree to address and resolve satisfaction of the valid lien.

(6) If an insurer with the right to settle on behalf of an insured receives a time-limited demand, the insurer may accept the time-limited demand by providing written acceptance of the material terms outlined in subsection (1) that is delivered or postmarked to the claimant within the time period set in the time-limited demand. The person or entity providing payment to satisfy the material terms may elect to provide payment by any one or more of the following means:

(a) cash;

(b) money order;

(c) wire transfer;

(d) a cashier's check issued by a bank or other financial institution;

(e) a draft or bank check issued by an insurer; or

(f) electronic funds transfer or other method of electronic payment.

(7) In any civil action commenced by or on behalf of a claimant, or by a claimant as an assignee of the allegedly responsible party, or by the allegedly responsible party for the benefit of the claimant:

(a) a time-limited demand that does not strictly comply with the terms of this section may not be considered as a reasonable opportunity to settle for the insurer and may not be admissible in any civil action alleging extracontractual damages against the allegedly responsible party's liability insurer; and

(b) ~~a claimant is not entitled to recover from the insurer as~~an insurer is not liable for any extracontractual damages arising from or related to any injuries, damages, or losses suffered by ~~the~~ a claimant that are not identified in the time-limited demand and supported by the documents, records, and information set forth in subsection (3).

(8) If an insurer receives a time-limited demand from a claimant that the insurer knows or reasonably believes is not represented by an attorney, and the insurer determines that the time-limited demand does not strictly comply with the requirements set forth in subsections (1) and (3), the insurer is obligated to notify the claimant of the requirements within 10 business days of receiving the time-limited demand from the claimant. On delivery of the notice to the claimant, any time limit imposed within the time-limited demand is extended a minimum of either 30 days, or by the number of days from and including the date on which the claimant presents a time-limited demand to the insurer that strictly complies with the requirements in subsections (4) and (5). If an insurer becomes obligated under this section to notify a claimant and fails to deliver the notice to the claimant, subsection (7) may not apply in any civil action alleging extracontractual damages against the insurer.

(9) For purposes of this section, the following definitions apply:

(a) "Allegedly responsible party" means any person or entity:

(i) claimed or alleged to have caused or contributed to cause property damage, personal injury, bodily injury, wrongful death, professional negligence or liability, or breach of any fiduciary duty; or

(ii) claimed or alleged to have committed, engaged in, or be liable for professional negligence or breach of fiduciary duty.

(b) "Claimant" means:

(i) any injured party delivering a time-limited demand to an insurer, including but not necessarily limited to the injured party's attorney or any other authorized representative acting for or on behalf of the injured party;

(ii) any insured under an insurance policy pursuing a claim or cause of action arising from or related in any manner to the insurance policy issued by the insurer and delivering a time-limited demand to the insurer, including but not necessarily limited to the insured's attorney or any other authorized representative

acting for or on behalf of the insured; or

(iii) any assignee of an injured party or insured delivering a time-limited demand to the insurer, including but not necessarily limited to the assignee's attorney or any other authorized representative acting for or on behalf of the assignee.

(c) "Extracontractual damages" means any amount of damages caused by the allegedly responsible party that exceeds the total available policy limit of liability for all policies of liability insurance that an insurer has issued to an allegedly responsible party and which policies of liability insurance are applicable to a claim for property damage, personal injury, bodily injury, wrongful death, professional negligence or liability, or breach of any fiduciary duty.

(d) "Insurer" means any insurer referred to or defined under 33-1-201 who has issued an insurance contract to an allegedly responsible party.

(e) "Time-limited demand" means any offer to settle any claim for personal injury, property damage, bodily injury, wrongful death, professional negligence or liability, or breach of any fiduciary duty, in which the offer to settle:

(i) is made by or on behalf of a claimant or is made based on or arising out of any rights of a claimant;

(ii) is delivered in writing to an allegedly responsible party's insurer for purposes of offering to settle a claim against the allegedly responsible party within any insurance policy limit of liability; and

(iii) states by its terms that it can only be accepted within a specified period of time.

NEW SECTION. **Section 2. Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 33, chapter 18, part 2, and the provisions of Title 33, chapter 18, part 2, apply to [section 1].

- END -

Senate Standing Committee Report

February 10, 2023

To the President,

We, your committee on **(S) Business, Labor, and Economic Affairs** report that **Senate Bill 244** (first reading copy – white) **Do Pass as Amended**. The referenced amendment is SB0244.001.001.

Signed: _____

Sen. Jason Small-R, Chair

-End-

Committee Vote:

Yes 10, No 0

SENATE BILL NO. 244

INTRODUCED BY M. CUFFE

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING LAWS RELATED TO MORTUARY SCIENCE LICENSING; REVISING INTERNSHIP REQUIREMENTS TO OBTAIN A LICENSE REQUIRED FOR THE PRACTICE OF MORTUARY SCIENCE; AMENDING SECTIONS 37-19-302 AND 37-19-304, MCA; AND PROVIDING AN EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 37-19-302, MCA, is amended to read:

"**37-19-302. License required for practice of mortuary science -- qualifications of applicants.** (1) The practice of mortuary science is limited to:

(a) licensed morticians;

(b) licensed interns; and

(c) students exempted under 37-19-308.

(2) A person 18 years of age or older wishing to practice mortuary science in this state ~~must~~ shall apply to the board on the form and in the manner prescribed by the board.

(3) To qualify for a mortician's license, a person must:

(a) be of good moral character;

(b) have graduated from an accredited college or university with an associate degree in mortuary science;

(c) pass an examination prescribed by the board and pay the application fee set by the board by rule; and

(d) serve a 1-year internship under the supervision of a licensed mortician in a licensed mortuary. ~~The internship may be served prior to or after passing the examination provided for in subsection (3)(c).~~

(4) A person who fails the examination required in subsection (3)(c) may retake the examination

under conditions prescribed by rule of the board."

Section 2. Section 37-19-304, MCA, is amended to read:

"**37-19-304. Issuance of intern's license -- license fee -- issuance of mortician's license on completion of internship.** An applicant currently enrolled in or having already graduated from a program qualifying under 37-19-302(3)(b) ~~who passes the examination provided for in 37-19-302~~ shall, upon payment of a license fee prescribed by the board, be granted an intern mortician's license to practice mortuary science under the supervision of a licensed mortician in a licensed mortuary in Montana ~~and, upon completion of 1 year's internship and payment of the license fee, may apply for and receive a mortician's license~~."

NEW SECTION. **Section 3. Severability.** If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

NEW SECTION. **Section 4. Effective date.** [This act] is effective July 1, 2023.

- END -

Senate Standing Committee Report

February 10, 2023

To the President,

We, your committee on **(S) Business, Labor, and Economic Affairs** report that **Senate Bill 263** (first reading copy – white) **Do Pass**.

Signed: Jason Small

Sen. Jason Small-R, Chair

-End-

Committee Vote:

Yes 10, No 0

Senate Standing Committee Report

February 10, 2023

To the President,

We, your committee on **(S) Business, Labor, and Economic Affairs** report that **Senate Bill 270** (first reading copy – white) **Do Pass as Amended**. The referenced amendment is SB0270.001.001.

Signed: _____

Sen. Jason Small-R, Chair

-End-

Committee Vote:

Yes 10, No 0

SENATE BILL NO. 270

INTRODUCED BY K. REGIER

A BILL FOR AN ACT ENTITLED: "AN ACT PROTECTING EMPLOYEE AND JOB APPLICANT RIGHTS TO LEGAL EXPRESSIONS OF FREE SPEECH, INCLUDING POSTS MADE ON SOCIAL MEDIA; PROVIDING THAT TERMINATION OF AN EMPLOYEE BASED ON THE EMPLOYEE'S LEGAL EXPRESSION OF FREE SPEECH, INCLUDING BUT NOT LIMITED TO STATEMENTS MADE ON SOCIAL MEDIA, IS DISCRIMINATION AND SUBJECT TO WRONGFUL DISCHARGE LAWS; PROVIDING EXCEPTIONS; AND AMENDING SECTIONS 39-2-307 AND 39-2-904, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 39-2-307, MCA, is amended to read:

"**39-2-307. Employer access limited regarding personal social media account of employee or job applicant -- conditions for exceptions -- employer retaliation prohibited -- penalties.** (1) Except as provided in subsection (2), an employer or employer's agent may not require or request an employee or an applicant for employment to:

(a) disclose a user name or password for the purpose of allowing the employer or employer's agent to access a personal social media account of the employee or job applicant;

(b) access personal social media in the presence of the employer or employer's agent; or

(c) divulge any personal social media or information contained on personal social media.

(2) An employee shall provide, if requested, to an employer or employer's agent the employee's user name or password to access personal social media when:

(a) (i) the employer has specific information about an activity by the employee that indicates work-related employee misconduct or criminal defamation, as provided in 45-8-212;

(ii) the employer has specific information about the unauthorized transfer by the employee of the employer's proprietary information, confidential information, trade secrets, or financial data to a personal online

account or personal online service; or

(iii) an employer is required to ensure compliance with applicable federal laws or federal regulatory requirements or with the rules of self-regulatory organizations as defined in section 3(a)(26) of the Securities and Exchange Act of 1934, 15 U.S.C. 78c(a)(26); and

(b) an investigation is under way and the information requested of the employee is necessary to make a factual determination in the investigation.

(3) Nothing in this section:

(a) limits an employer's right to promulgate and maintain lawful workplace policies governing the use of the employer's electronic equipment, including a requirement for an employee to disclose to the employer the employee's user name, password, or other information necessary to access employer-issued electronic devices, including but not limited to cell phones, computers, and tablet computers, or to access employer-provided software or e-mail accounts;

(b) prevents an employee from seeking injunctive relief in response to the provisions of subsection (2); or

(c) prevents the prosecution of a person for violating privacy in communications under 45-8-213.

(4) An employer may not discharge, discipline, threaten to discharge or discipline, or otherwise retaliate against an employee or job applicant for:

(a) not complying with a request or demand by the employer that violates this section; or

(b) legal expressions of free speech by the employee or job applicant, as protected in 39-2-904, made on personal social media.

(5) The provisions of subsection (4)(b) do not apply if the expression:

(a) by an employee or job applicant violates an employer's written policy; or

(b) violates the terms or conditions of the employee's employment contract.

~~(5)~~(6) (a) As used in this section, "personal social media" means a password-protected electronic service or account containing electronic content, including but not limited to e-mail, videos, still photographs, blogs, video blogs, podcasts, instant and text messages, internet website profiles or locations, and online services or accounts, including password-protected services or accounts to which an employee may post

information, data, or pictures.

(b) The term does not include a social media account that is:

(i) opened for or provided by an educational institution and intended solely for educational purposes; or

(ii) opened for or provided by an employer and intended solely for business-related purposes.

~~(6)~~(7) (a) An employee or an applicant for employment may bring an action against an employer for violating this section within 1 year in a small claims court. An employee or an applicant for employment may also have a cause of action under 45-8-213.

(b) Damages are limited to $500 or actual damages up to the limit provided in 3-10-1004. Legal costs may be awarded to the party that prevails in court.

~~(7)~~(8) If an employer gains information improperly under this section and subsequently is involved in a computer security breach as provided in 30-14-1704, the employer is subject to penalties under 30-14-142."

Section 2. Section 39-2-904, MCA, is amended to read:

"**39-2-904. Elements of wrongful discharge.** (1) A discharge is wrongful only if:

(a) it was in retaliation for the employee's refusal to violate public policy or for reporting a violation of public policy;

(b) the discharge was not for good cause and the employee had completed the employer's probationary period of employment; ~~or~~

(c) the employer materially violated an express provision of its own written personnel policy prior to the discharge, and the violation deprived the employee of a fair and reasonable opportunity to remain in a position of employment with the employer; or

(d) the employer terminated the employee solely based on the employee's legal expression of free speech, including but not limited to statements made on social media.

(2) During a probationary period of employment, the employment may be terminated at the will of either the employer or the employee on notice to the other for any reason or for no reason.

(3) The employer has the broadest discretion when making a decision to discharge any

BILL TABLED NOTICE

Senate (S) Business, Labor, and Economic Affairs

The Senate (S) Business, Labor, and Economic Affairs TABLED

SB223-Establish requirements for insurance coverage of clinician-administered drugs- Sen. Steve Fitzpatrick

by motion, on Friday February 10, 2023, (PLEASE USE THIS ACTION ~~DATE~~ IN LAWS BILL STATUS).

Daisy Rhodes
(For the Committee)

Pollello
(For the Secretary of the Senate)

12:00p / 2/10/23
(time) (date)

SENATE COMMITTEE ON (S) BUSINESS, LABOR, AND ECONOMIC AFFAIRS
February 10, 2023
VOTE TABULATION - SB 165

Sen. Noland made a Motion that SB0165.001.001 Be Amended
YEAS – 7 NAYS - 3

N	Curdy, Willis
Y	Ellsworth, Jason; by proxy
Y	Fitzpatrick, Steve; by proxy
N	Fox, Mike
Y	Gillespie, Bruce
Y	Noland, Mark
N	Pope, Christopher; by proxy
Y	Sales, Walt
Y	Small, Jason
Y	Vermeire, Terry

SENATE COMMITTEE ON (S) BUSINESS, LABOR, AND ECONOMIC AFFAIRS
February 10, 2023
VOTE TABULATION - SB 165

Sen. Curdy made a Motion that SB 165 Do Pass as Amended
YEAS – 7 NAYS - 3

N	Curdy, Willis
Y	Ellsworth, Jason; by proxy
Y	Fitzpatrick, Steve; by proxy
N	Fox, Mike
Y	Gillespie, Bruce
Y	Noland, Mark
N	Pope, Christopher; by proxy
Y	Sales, Walt
Y	Small, Jason
Y	Vermeire, Terry

SENATE COMMITTEE ON (S) BUSINESS, LABOR, AND ECONOMIC AFFAIRS
February 10, 2023
VOTE TABULATION - SB 178

Sen. Noland made a Motion that SB0178.001.002 Be Amended
YEAS – 8 NAYS - 2

N	Curdy, Willis
Y	Ellsworth, Jason; by proxy
Y	Fitzpatrick, Steve; by proxy
Y	Fox, Mike
Y	Gillespie, Bruce
Y	Noland, Mark
N	Pope, Christopher; by proxy
Y	Sales, Walt
Y	Small, Jason
Y	Vermeire, Terry

SENATE COMMITTEE ON (S) BUSINESS, LABOR, AND ECONOMIC AFFAIRS
February 10, 2023
VOTE TABULATION - SB 178

Sen. Noland made a Motion that SB 178 Do Pass as Amended
YEAS – 8 NAYS - 2

N	Curdy, Willis
Y	Ellsworth, Jason; by proxy
Y	Fitzpatrick, Steve; by proxy
Y	Fox, Mike
Y	Gillespie, Bruce
Y	Noland, Mark
N	Pope, Christopher; by proxy
Y	Sales, Walt
Y	Small, Jason
Y	Vermeire, Terry

SENATE COMMITTEE ON (S) BUSINESS, LABOR, AND ECONOMIC AFFAIRS
February 10, 2023
VOTE TABULATION - SB 211

Sen. Noland made a Motion that SB 211 Do Pass as Amended
YEAS – 7 NAYS - 3

N	Curdy, Willis
Y	Ellsworth, Jason; by proxy
Y	Fitzpatrick, Steve; by proxy
N	Fox, Mike
Y	Gillespie, Bruce
Y	Noland, Mark
N	Pope, Christopher; by proxy
Y	Sales, Walt
Y	Small, Jason
Y	Vermeire, Terry

SENATE COMMITTEE ON (S) BUSINESS, LABOR, AND ECONOMIC AFFAIRS
February 10, 2023
VOTE TABULATION - SB 216

Sen. Noland made a Motion that SB 216 Do Pass
YEAS – 7 NAYS - 3

N	Curdy, Willis
Y	Ellsworth, Jason; by proxy
Y	Fitzpatrick, Steve; by proxy
N	Fox, Mike
Y	Gillespie, Bruce
Y	Noland, Mark
N	Pope, Christopher; by proxy
Y	Sales, Walt
Y	Small, Jason
Y	Vermeire, Terry

SENATE PROXY

I, Senator Fitzpatrick, hereby authorize Senator Mark Nolan to vote my proxy before the Senate _____ meeting held on _____, 2023.

Senator Signature

1-10-23
Date

Said authorization is as follows: *(mark only one)*

- ☐ All votes, including amendments.
- ☐ All votes as directed below on the listed bills, and all other votes.
- ☐ Votes only as directed below.

Bill No./Amendment No.	Aye	No
Sb 0622.001.002	V	
Sb. 222	V	
Sb 0165.001.001 Amend	V	
Sb 165	V	
Sb 178.001.002 Amend	V	
Sb 178	V	
Sb 0211.001.001 Amend	V	
Sb 211	V	
Sb 223		V
Sb 223 Tabled	V	
Sb 236.001.01 Amend	V	
Sb 236	V	
Sb 0244.001.001 Amend	V	
Sb 244	V	
Sb 270.001.001 Amend	V	
Sb 270	V	
Sb 263	V	

SENATE PROXY

I, Senator Elsworth, hereby authorize Senator Mark Weland to vote my proxy before the Senate _____ meeting held on _____, 2023.

_____ _____

Senator Signature Date

Said authorization is as follows: *(mark only one)*

- ☑ All votes, including amendments.
- ☐ All votes as directed below on the listed bills, and all other votes.
- ☐ Votes only as directed below.

Bill No./Amendment No.	Aye	No
SB 00 22.0610.002 Amend	✓	
SB 222	✓	
SB 0165.001.001 Amend	✓	
SB 165	✓	
SB 0178.001.002 Amd	✓	
SB 178	✓	
SB 0211.001.001 Amend	✓	
SB 211	✓	
SB 223		✓
SB 236.001.001 Amend	✓	
SB 236 0001.001	✓	
SB 216	✓	
SB 0244.001.001 Amend	✓	
SB 244	✓	
SB 270.001.01 Amend	✓	
SB 270	✓	
SB 263	✓	
SB 223 Tabled	✓	

SENATE PROXY

I, Senator Pope, hereby authorize Senator Willis Cundy to vote my proxy before the Senate Business, Labor & Economic Affairs meeting held on Feb 10, 2023.

Willis Cundy
Senator Signature

Feb 10, 2023
Date

Said authorization is as follows: *(mark only one)*

- ☒ All votes, including amendments.
- ☐ All votes as directed below on the listed bills, and all other votes.
- ☐ Votes only as directed below.

Bill No./Amendment No.	Aye	No
SB 270	X	
SB 263	X	
SB 223 Table	X	

SENATE PROXY

I, Senator Chris Pope, hereby authorize Senator Willis Curley to vote my proxy before the Senate Business, Labor & Economic Affairs meeting held on Feb 10, 2023.

Willis Curley
Senator Signature

Feb 10, 2023
Date

Said authorization is as follows: *(mark only one)*

- ☒ All votes, including amendments.
- ☐ All votes as directed below on the listed bills, and all other votes.
- ☐ Votes only as directed below.

Bill No./Amendment No.	Aye	No
SB0022.001.001 Amend	X	
SB22	X	
SB0165.001.001 Amend		X
~~SB0165.001~~		
SB0165		X
SB0178.001.002 Amend		X
SB178		X
SB0211.001.001 Amend	X	
SB211		X
SB216		X
SB223		X
SB236.001.001 Amend	X	
SB236	X	
SB0244.001.001 Amend	X	
SB244	X	
SB0270.001.001 Amend	X	

both

MONTANA STATE SENATE
Visitors Register

BUSINESS, LABOR & ECONOMIC AFFAIRS **Date** 2/10/23

Bill No. SB243 **Sponsor(s)** SEN. REGIER

PLEASE PRINT **PLEASE PRINT** **PLEASE PRINT**

Name and Address	Representing	Support	Oppose	Inf.
Brandon Huber 2940 Bonita Ranger Station Rd Clinton MT	Self	✓		
Sarah Bauer 800 N. Benton Ave Helena	Self	✓		✓
Jacob Duwe 901 Pine Hollow Rd Stevensville, MT	Self	✓		
Rob Erickson 520 Ford Street MSO, MT	MAR		✓	
Mr Mrs Scott Bozeman MT	Self	✓		
Sam Sill	MAR		✓	
Donna Elfgard	Self	✓		
Greg Van Horssen	MAR		✓	

Please leave prepared testimony with Secretary. Witness Statement forms are available if you care to submit written testimony.

MONTANA STATE SENATE
Visitors Register

BUSINESS, LABOR & ECONOMIC AFFAIRS **Date** 2/10/23

Bill No. SB263 **Sponsor(s)** SEN REGIER

PLEASE PRINT **PLEASE PRINT** **PLEASE PRINT**

Name and Address	Representing	Support	Oppose	Inf.
Tom Ebzery	MT Airport Mgrs	X		
Ian McKay	MT Airport Mgmt Assn	X		
Tim Conway	MDT			X
Ross Marty	MT Airport Mgmt Assn	X		

Please leave prepared testimony with Secretary. Witness Statement forms are available if you care to submit written testimony.

MONTANA STATE SENATE
Visitors Register

BUSINESS, LABOR & ECONOMIC AFFAIRS **Date** 2/10/23

Bill No. SB 264 **Sponsor(s)** Sen. REGIER

PLEASE PRINT **PLEASE PRINT** **PLEASE PRINT**

Name and Address	Representing	Support	Oppose	Inf.
Becky Schlauch	DOR-ABC			~
Tom Ebzery	MT Airport Mgrs.	X		
Ian McKay	MT Airport Mgrs Assn	X		
Tim Conway	MDT			X
Ross Marty	MT Airport Managers	X		

Please leave prepared testimony with Secretary. Witness Statement forms are available if you care to submit written testimony.

BUS

Date

Date	Committee	H/S	Bill #	Position	Requester Name	Location	Affiliation
2/10/23	BUS	SB	243	Proponent	Constance Neumann	Kila, MT	N/A
2/10/2023	BUS	SB	243	Proponent	Jeff Laszloffy	Laurel, MT	Montana Family Foundation
2/10/2023	BUS	SB	243	Proponent	Lance Kinzer	Olathe, KS	1st amendment partnership
2/10/2023	BUS	SB	243	Opponent	Angelina Gonzalez-Aller	Bozeman, MT	Montana Human Rights Network
2/10/2023	BUS	SB	243	Opponent	Adrian Jawort	Billings, MT	N/A
2/10/2023	BUS	SB	243	Opponent	Pari Kemmick	Billings, MT	N/A
2/10/2023	BUS	SB	243	Opponent	Cherilyn DeVries	Kalispell, MT	Montana Human Rights Network/ Love Lives Here
2/10/2023	BUS	SB	243	Opponent	Andy Nelson	Missoula, MT	N/A
2/10/2023	BUS	SB	243	Opponent	Ann Blair	Missoula, MT	N/A
2/10/2023	BUS	SB	243	Opponent	Izzy Milch	Missoula, MT	Forward Montana

Additional Documents
SENATE: Business & Labor
Date: 2/10/23
Bill No. SB243

1st Amendment PARTNERSHIP
Faiths united for religious freedom

February 6, 2023

Chairman Jason Small
Senate Business, Labor, and Economic Affairs Committee
Montana State Capitol
Helena, Montana

SUBJECT: SB 243

Dear Chairman Small & Members of the Committee:

My name is Lance Kinzer, and I am the Policy Director for 1st Amendment Partnership where we are privileged to work with some of the nation's largest faith communities with respect to our common commitment to religious freedom. SB 243 offers a simple solution to a profound problem. For decades federal regulations, and the law in Montana and most other states, have prohibited religious discrimination in access to, as well as membership or participation in, a realty multiple-listing services (MLSs) or real estate brokers' organizations.[1] The National Association of Realtors (NAR) and its local affiliates are private organizations, and MLS's privately owned. But their unique role in relation to access to real estate markets has long been understood to make them appropriate subjects for reasonable legal constraints on polices that limit access.

This is particularly the case given the market power associated with the MLS. Indeed, while Courts have been divided on the subject, in 1991 the Eleventh Circuit Court of Appeals ruled that limiting MLS access to realtor association members violates federal anti-trust law. The case was remanded to allow the association to prove that there were legitimate pro-competitive justifications for restricted MLS access to association members.[2] But rather than litigating the case further, the association settled agreeing to provide MLS access to non-members. That resolution remains in effect in Alabama, Florida, and Georgia. A similar result was reached in state court in California, under that state's antitrust statute.[3] As a result of those judicial resolutions, in those 4 states MLS access cannot be limited to association members.

These existing regulatory, statutory and judicial constraints on relator association membership and/or MLS access all speak to the fact that government action in this area is not treading new ground. Rather, SB 243 is a natural extension of existing legal constraints designed to ensure reasonable access to realtor associations and MLSs.

SB 243 would make it clear that a realtor's lawful private, religious or moral beliefs and expression cannot be the basis of punitive action by a relator association. Prior to November of 2020, there was no need for such protection because the NAR appropriately limited its disciplinary rules to real estate related activities. That changed when the NAR amended its Code of Ethics (COE), noting that, "This revised policy expands applicability to all of a REALTOR®'s [SIC] activities."[4] Simultaneously, the NAR revised its definition of "public trust", thus heightening the potential

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[1] *See* Montana Statutes Annotated 49-2-305(8); 24 CFR § 100.90
[2] *Thompson v. Metropolitan Multilist*, 934 F. 2nd 1566 (11th Cir. 1991)
[3] *Marion County Board of Realtors v. Paisson*, 549 P.2d 833 (Cal. 1976); *Glendale Bd. Of Realtors v. Hounsell*, 139 Cal. Rptr. 830 (Cal. Ct. App. 1977); *People v. National Association of Realtors*, 174 Cal. Rpt. 728 (Cal. Ct. App. 1981).
[4] https://cdn.nar.realtor/sites/default/files/documents/Updated-Jan-2021-PSC-Approved-Recommendations-11-13-2020.pdf

punishment that may be imposed for speech and expression related violations of the NAR COE; placing them on par with misappropriation of client funds, willful discrimination, or fraud.[5] Under NAR's Disciplinary Guidelines a first offence involving speech or expression may now carry with it "a fine of $10,000 or less" as well as "termination of membership for up to three (3) years."[6] While such punishments are not mandatory, they are illustrative of what sanctions the NAR suggests may be appropriately imposed.

The NAR justified these changes as an effort to prevent harassing speech or hate speech directed toward a protected class. The NAR provides some guidance regarding the meaning of these terms, but ultimately instructs hearing panels that, "The terms "harassing speech," "hate speech," "epithets," and "slurs" can be commonly understood by use of a dictionary as well as other easily available references."[7]

The scope of the changes to the NAR COE, and the breadth of the potential conduct impacted by them, were causes for immediate concern among realtors who feared the NAR was seeking to weaponize its COE in a way that would allow them to punish speech and expression involving traditional religious and moral views regarding marriage, family and sexuality. As one Christian realtor put it in the aftermath of the 2020 COE change, "Though I am sure the changes made to the *COE* and *SPSP* on November 13th were intended to quell discrimination, I am concerned they will potentially *foster discrimination* against a particular group of Realtors. I believe these changes may put Christian Realtors in a position in which they must choose either to 1) remain silent in the public sphere about issues pertaining to sexual orientation and gender identity, or 2) share their historic Christian beliefs about these issues and risk being wrongfully accused of and reported for hate speech."

Events over the past year and a half in Montana have proven these concerns to be well founded. While others will provide greater detail on the specifics of the case, the story of bi-vocational pastor & realtor Brandon Huber and his discipline by The Missoula Organization of Realtors (an NAR affiliate), makes it plain that the new NAR COE is so expansive as to apply to the religious speech and expression of a Pastor in relation to the conduct of his own congregation. Pastor Huber's situation also shows the inadequacy of existing legal protections to address situations where the NAR chooses to punish lawful private speech unrelated to real estate or professional services as a realtor.

Numerous states across the country are watching Pastor Brandon's case, and this legislatures response, as they evaluate their own potential actions to protect the ability of realtors to practice their profession, even if they hold and express disfavored views on sensitive areas regarding marriage family and sexuality.

SB 243 is a narrowly crafted response to an increasingly pressing issues. It leaves the NAR and its affiliates free to regulate speech and expression as it sees fit, when that speech or expression occurs with respect to real estate related activates. It merely restores the pre-November 2020 reach of NAR COE speech restrictions. SB 243 does nothing to limit the range of protected classes the NAR COE can cover, nor the punishments that can be imposed. It merely states that whatever standards and punishment's it wishes to apply, cannot be exacted based upon a realtor's lawful and non-real-estate related speech or expression of their religious or moral beliefs. If not responded to, the NAR's limits of the expression of religious views it disagrees with will send a message to other professional associations that it is acceptable to exclude individuals from professional opportunities because of their religious expression. Montana can play an important role in stopping this in its tracks.

Sincerely,

Lance Kinzer
Directory Of Policy and Government Relations
First Amendment Partnership

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[5] Id.
[6] Id.
[7] Id.

Hello, my name is Karen Berg-DiGangi. I am a resident of Missoula and a proud member of the LGBTQ+ community. I am voicing my strong opposition to SB243.

This bill is focused on attacking the professional standards that Realtors - as members of the National Association of Realtors and it's local branches - are held accountable for.

The realtor code of ethics does not in any way inhibit one's religious freedom. Instead their focus, as first adopted in 1913 as one of the first codifications of ethical duties by any business group, is to encourage, promote and preserve every person's right to own, use, exchange and transfer real property. These ensure and enhance the professionalism and integrity of the real estate industry.

Any individual seeking assistance with real estate, should not have to vet and determine if the person they are working with feels ill will toward them. And they should feel safe in knowing that if they do feel discriminated against, they have a process and backing to safely report any issues. In business you will often work with those that have different beliefs than you. As a Realtor myself, I have worked with vegans despite being a hunter, worked with christians despite being agnostic and worked with conservatives despite being liberal. I know that every client I come across is worthy of my highest ability and work and in no way deserve discrimination for a difference in life or belief. Most importantly though, THEY know that they will receive that because of my title as a Realtor.

Discrimination of any kind, towards any person, should not be allowed in the real estate industry. Housing is a basic human right.

Bill: SB-243
Committee: (S) Business, Labor, and Economic Affairs
Position: Opponent
Representation: Yes
Representation Org: Montana Human Rights Network/ Love Lives Here
Full Name: Cherilyn DeVries
Zoom Request: Yes
Zoom Type: Computer
City/State: Kalispell, MT

Dear Committee Members,

On behalf of the Montana Human Rights Network and our statewide membership, I urge you to vote no on SB 243, which is an attempt to override the ethical code of professional organizations.

As you review this bill, it is important to remember that it arose because a number of Montana Realtors recognized that very public actions by one of its members violated the ethics code of the Missoula Organization of Realtors (MOR). There is no widespread problem in need of correction. MOR says its code ensures that consumers are served by requiring REALTORS to cooperate with each other in furthering clients' best interests. The Code also states that the organizations Realtors are zealous to maintain and improve the standards of their calling and share with their fellow REALTORS a common responsibility for its integrity and honor.

The Realtor in this situation didnt have a complaint filed against them due to an off-handed comment at their home or church. They were part of a very public multi-city tour that claimed that one of the speakers would expose the LGBTQ agenda that controls our lives and kills our liberty. That message was repeatedly published on the Realtors public Facebook page and on a discredited news blog managed by a former pastor who was found guilty of defamation for false comments published about a transgender Montanan.

Realtors know that discrimination is not only against the law, discrimination also harms the character of all Realtors and Montanas valued real estate industry. There is no reason to protect open discrimination toward LGBTQ+ Montanans or anyone in the state. Every resident has the right to have professional, ethical behavior followed when they purchase property through a Realtor, and professional organizations have the right to take corrective action when they see one of their members acting unethically.

Please vote no on SB 243.

Bill: SB-243
Committee: (S) Business, Labor, and Economic Affairs
Position: Opponent
Representation: No
Representation Org: N/A
Full Name: Andy Nelson
Zoom Request: Yes
Zoom Type: Computer
City/State: Missoula, MT

Hello,

My name is Andy Nelson. I am a proud, life-long Montanan, originally from Culbertson and currently reside and work in Missoula. I am voicing my strong opposition toward SB 243. Actions face consequences and I know this bill is a way to keep individuals that publicly voice hateful rhetoric from facing consequences by their employer, in this case, those working in the real-estate industry. Claiming "religious freedom" as an excuse to voice hateful rhetoric toward a specific group of people goes against the moral and ethical standards of most organized institutions, companies and the real-estate industry. Living in this great country, we all have the right to free speech, however, that does not mean some speech does not have consequences, especially when one is held to a specific standard by their employer.

Frankly, this is bad for business. Period. Hate speech is bad for business. Discrimination is bad for business. For example, giving a real-estate agent protection to voice homophobic, transphobic or racist speech under the protection of religious freedom will only result in the loss of interested parties, me being one of them. As an out and proud 30 year old gay man who has lived in Montana his whole life and hopes to one day buy a home, there is absolutely no way I would seek a realtor or go through an association that sweeps hate speech from their employees under the rug. I grew up in a church. I know what discrimination feels like and how many use religion as their shield. That's not what Jesus taught and that is not what being a Christian is.

People are responsible for their actions and actions have consequences.

Sincerely,

Andy Nelson

Bill: SB-243
Committee: (S) Business, Labor, and Economic Affairs
Position: Opponent
Representation: No
Representation Org: N/A
Full Name: Ann Blair
Zoom Request: Yes
Zoom Type: Computer
City/State: Missoula, Mt

I cant think of a religion that promotes hating individuals or holding them away from the things in life that many of us take for granted. It is science that has shown us that gay people are born gay, with actual physical differences in their brainsits not a choice; its not a sin. Professional organizations have the right, and, I believe, an obligation to require of their members standards exceeding legal requirements that dictate our treatment of everyone in a professional and inclusive manner. When you are a voluntary member of an organization, professional or otherwise, you have agreed to conduct yourself in accordance with their principles. Dont want to do that? Dont be a member.

Bill: SB-243
Committee: (S) Business, Labor, and Economic Affairs
Position: Opponent
Representation: No
Representation Org: N/A
Full Name: Riley Kurtz
Zoom Request: No
Zoom Type: N/A
City/State: Helena, MT

I dont believe this bill should try to legislate what the code of ethics for Realtors. I believe the Realtors Association should retain the right to decide what is professional or unprofessional conduct among ourselves.

Bill: SB-243
Committee: (S) Business, Labor, and Economic Affairs
Position: Opponent
Representation: Yes
Representation Org: Zest Billings llc
Full Name: Marguerite
Zoom Request: No
Zoom Type: N/A
City/State: Billings mt

I oppose this bill. Private organizations should have the right to decide what is considered professional and acceptable conduct for their members. If an individual does not want to adhere to those standards, they should not be part of the organization. And saying that fearing for ones safety is a natural and acceptable consequence of being gay is beyond abhorrent.

Bill: SB-243
Committee: (S) Business, Labor, and Economic Affairs
Position: Opponent
Representation: No
Representation Org: N/A
Full Name: Pari Kemmick
Zoom Request: Yes
Zoom Type: Computer
City/State: Billings, MT

Thank you for your time today. My name is Pari Kemmick (K-E-M-M-I-C-K) and I live in Billings, MT. I am testifying today in DEEP opposition to Senate Bill 243. I am honestly shocked that still, in 2023, we are debating whether hate speech should be tolerated. We have seen time and time again the harm that homophobic hate speech has on LGBTQ+ people all across this state. It is sickening to me that the legislators continuously introducing bills like this one are ok with sending a message to queer folks in Montana that not only are they not welcome here, but that it is ok to openly discriminate against them. That is not the Montana that I was born and raised in and it is certainly not the Montana of the future. Hate speech is not religious freedom, hate speech is harmful, violent and against who we are as Montanans. I cannot stress enough how dangerous and harmful legislation like this is. I once again urge you to vote no on Senate Bill 243 and spend your time addressing the real crises our state faces like affordable housing, public health and more.

Bill: SB-243
Committee: (S) Business, Labor, and Economic Affairs
Position: Opponent
Representation: No
Representation Org: N/A
Full Name: Pari Kemmick
Zoom Request: Yes
Zoom Type: Computer
City/State: Billings, MT

Thank you for your time today. My name is Pari Kemmick and I live in Billings, MT. I am testifying today in DEEP opposition to Senate Bill 243. I am honestly shocked that still, in 2023, we are debating whether hate speech should be tolerated. We have seen time and time again the harm that homophobic hate speech has on LGBTQ+ people all across this state. It is frightening to me that the legislators continuously introducing bills like this one are ok with sending a message to queer folks in Montana that not only are they not welcome here, but that it is ok to openly discriminate against them. That is not the Montana that I was born and raised in and it is certainly not the Montana of the future. Hate speech is not religious freedom, hate speech is harmful, violent and against who we are as Montanans. I cannot stress enough how dangerous and harmful legislation like this is. I once again urge you to vote no on Senate Bill 243 and spend your time addressing the real crises our state faces and focus on issues that bring us together, not those that continue to divide us.

Additional Documents
SENATE: Business & Labor
Date: 2/10/23
Bill No. SB 263

Bill: SB-263
Committee: (S) Business, Labor, and Economic Affairs
Position: Proponent
Representation: Yes
Representation Org: Aircraft Owners and Pilots Association (AOPA)
Full Name: Brad Schuster
Zoom Request: No
Zoom Type: N/A
City/State: Kirkland, Washington

Fully support this legislation; see written testimony

601 Pennsylvania Ave NW, Suite 250
Washington, D.C. 20004

T. 202-509-9670
www.aopa.org

your freedom to *fly*

February 4, 2023

Senate Business, Labor, and Economics Affairs Committee
Montana State Legislature
State Capitol
PO Box 201706
Helena, MT 59620-1706

Re: SB 263 - An Act Revising Airport Authority Contracting Laws; Allowing Authorities to Enter into Certain Contracts, Leases, and Arrangements for 50 Years; and Amending Section 67-11-211

Chairman Small and Members of the Senate Business, Labor, and Economics Affairs Committee,

The Aircraft Owners & Pilots Association (AOPA) is the world's largest aviation membership organization representing the general aviation interests of hundreds of thousands of aircraft owners and pilots across the country, including almost 2,500 from the state of Montana. On behalf of these members, **AOPA supports Senate Bill 263, An Act Revising Airport Authority Contracting Laws; Allowing Authorities to Enter into Certain Contracts, Leases, And Arrangements For 50 Years; and Amending Section 67-11-211** of the Montana Code Annotated (MCA).

Senate Bill 263 proposes to amend Section 67-11-211 of the MCA entitled *"Granting of Operation and Use Privileges"* to allow an authority to *enter into contracts, leases, and other arrangements for terms not to exceed 50 years with any persons*, instead of the current forty (40) year limit. Providing authority to airports to allow land leases of up to fifty years would bring the state into better alignment with the Federal Aviation Administration Airport Compliance Manual (Order 5190.6b) which recommends lease maximums of not more than 50 years. Further, the regulatory constraints and costs associated with new airport development often disincentivizes would-be developers and lenders from supporting shorter term leases. Longer lease terms can be particularly helpful for Montana's general aviation airports where a more diverse range of revenue sources are often required to approach airport financial self-sustainment. Particularly given that airport sponsors sometimes assume ownership of structures at the conclusion of a lease, increasing the initial lease period will allow developers to better amortize expenses and vastly enhance the attractiveness of development opportunities.

For these reasons, **AOPA Supports Senate Bill 263**. Please consider AOPA as a resource on this topic and other matters related to general aviation. For questions or concerns, contact AOPA Northwest Mountain Regional Manager brad.schuster@aopa.org or by phone at 202-851-7502.

Sincerely,

Brad Schuster
Northwest Mountain Regional Manager, AOPA

Cc:
Administrator, Montana State Department of Transportation-Aeronautics Division
Montana Airport Management Association
Montana Pilots Association

MINUTES

MONTANA HOUSE OF REPRESENTATIVES

68th LEGISLATURE - REGULAR SESSION

COMMITTEE ON (H) JUDICIARY

Call to Order: Chair Amy Regier-R, on March 24, 2023 at 8:01 AM, in 137

ROLL CALL

Members Present:	Rep. Amy Regier, Chair (R) Rep. Laurie Bishop, Vice Chair (D) Rep. Brandon Ler, Vice Chair (R) Rep. Jennifer Carlson (R) Rep. Lee Deming (R) Rep. Neil Duram (R) Rep. Jodee Etchart (R) Rep. Tom France (D) Rep. Donavon Hawk (D) Rep. Caleb Hinkle (R) Rep. Jedediah Hinkle (R) Rep. SJ Howell (D) Rep. Greg Kmetz (R) Rep. Casey Knudsen (R) Rep. Wayne Rusk (R) Rep. Laura Smith (D)
Members Excused:	Rep. Kim Abbott (D) Rep. Braxton Mitchell (R) Rep. Lola Sheldon-Galloway (R) Rep. Zooey Zephyr (D)
Staff Present:	Jamie Van Valkenburg, Secretary Rachel Weiss, Research Analyst

Audio Committees: These minutes are in outline form only. They provide a list of participants and a record of official action taken by the committee. The link to the audio recording of the meeting is available on the Legislative Branch website.

Committee Business Summary:

Hearing & Date Posted:

HB 479 03/23/2023
SB 169 03/16/2023
SB 172 03/20/2023
SB 180 03/16/2023

SB 184 03/16/2023
SB 216 03/16/2023
SB 268 03/16/2023
SB 277 03/20/2023

Executive Action:

HEARING ON SB 216 - Revise laws related to litigation and products

Opening Statement:

08:02:34 Sen. Steve Fitzpatrick (R), SD 10, opened the hearing on SB 216, Revise laws related to litigation and products.

Proponent Testimony:

08:08:14 Charles Robison, Montana Chamber of Commerce

EXHIBIT(230324JUHa1)

08:09:52 Lee Mickus, American Tort Reform Association

08:12:42 Ronda Wiggers, National Federation of Independent Businesses

08:13:50 Dan Brooks, Billings Chamber of Commerce

08:14:47 Bryan Wood, Woods Power Grip

Opponent Testimony:

08:16:26 Al Smith, Montana Lawyers Association

EXHIBIT(230324JUHa2)

EXHIBIT(230324JUHa3)

08:20:44 Amanda Frickle, American Federation of Labor and Congress of Industrial Organizations

08:23:04 Jim Hunt, Montana Trial Lawyers

08:26:17 Adam Haight, American Federation of Labor and Congress of Industrial Organizations

08:27:07 Domenic Cossi, Self

08:28:39 Mark Person, Self

08:30:18 Brett DeBruycker, Self

08:31:42 Monte Beck, Self

08:33:11 Jory Ruggiero, Self

08:35:09 Anthony Jackson, Self

08:36:22 Alexander Blewett, Self

08:37:54 Tom Copenhaver, Self

Informational Witness Testimony:

None

Questions from Committee:

08:39:36 Rep. Casey Knudsen

09:08:27 Bryan Wood

Closing Statement:

09:09:31 Sen. Steve Fitzpatrick (R), SD 10, closed the hearing on SB 216.

HEARING ON SB 277 - Revise laws relating to victims of crime

Opening Statement:

09:09:48 Sen. Shane Morigeau (D), SD 95, opened the hearing on SB 277, Revise laws relating to victims of crime.

Discussion:

EXHIBIT(230324JUHa4)

EXHIBIT(230324JUHa5)

Proponent Testimony:

09:20:38 Robin Turner, Montana Coalition Against Domestic and Sexual Violence

09:22:50 Kristi Bice, Self

Opponent Testimony:

None

Informational Witness Testimony:

None

Questions from Committee:

None

Closing Statement:

09:24:44 Sen. Shane Morigeau (D), SD 95, closed the hearing on SB 277.

HEARING ON SB 180 - Generally revise court-appointed special advocate and guardian ad litem laws

Opening Statement:

09:27:05 Sen. Dennis Lenz (R), SD 53, opened the hearing on SB 180, Generally revise court-appointed special advocate and guardian ad litem laws.

Proponent Testimony:

09:31:06 Denise Johnson, Montana Child Protection Alliance

Opponent Testimony:

09:32:27 April Barnings, Montana Casa

09:34:51 Alison Dunne, Casa

09:38:40 Devonna McCartney, Casa

09:41:09 Leslie Halligan, Self

09:43:42 Paulina Roberts, Self

09:45:28 Cherie LeBlanc-Dyba, Casa

Informational Witness Testimony:

09:47:19 Chase Rosario, State Coordinator for CASA

09:48:33 Nikki Grossberg, Child and Family Services Division

Questions from Committee:

09:49:06 Rep. Jodee Etchart

09:58:50 Leslie Halligan

Closing Statement:

09:59:21 Sen. Dennis Lenz (R), SD 53, closed the hearing on SB 180.

HEARING ON SB 184 - Revise procedural requirements in child abuse and neglect proceedings

Opening Statement:

10:01:50 Sen. Dennis Lenz (R), SD 53, opened the hearing on SB 184, Revise procedural requirements in child abuse and neglect proceedings.

Proponent Testimony:

10:07:28 Denise Johnson, Montana Child Protection Alliance

Opponent Testimony:

10:09:09 Bruce Spencer, Montana Judges Association

10:12:29 Heather Webster, Yellowstone County Attorney's Office

Informational Witness Testimony:

10:13:56 Nikki Grossberg, Child and Family Services Division

10:14:16 Brian Smith, Office of the Public Defender

Questions from Committee:

10:14:48 Rep. Jennifer Carlson

10:20:30 Brian Smith

Closing Statement:

10:21:42 Sen. Dennis Lenz (R), SD 53, closed the hearing on SB 184.

HEARING ON HB 479 - Provide appropriation for DOJ to assume law enforcement PL-280

Opening Statement:

10:26:04 Rep. Joe Read (R), HD 93, opened the hearing on HB 479, Provide appropriation for DOJ to assume law enforcement PL-280.

Proponent Testimony:

10:38:44 Gale Decker, Lake County Commissioner

Opponent Testimony:

10:40:51 Lex Pierre, Look up his tribe name

Informational Witness Testimony:

10:45:32 Nate Thomas, Department of Justice

Questions from Committee:

10:45:56 Rep. Donavon Hawk

10:47:04 Rep. Joe Read-R

Closing Statement:

10:47:39 Rep. Joe Read (R), HD 93, closed the hearing on HB 479.

HEARING ON SB 172 - Generally revise bail bond laws

Opening Statement:

10:53:15 Sen. Chris Friedel (R), SD 26, opened the hearing on SB 172, Generally revise bail bond laws.

Proponent Testimony:

10:57:43 Frank Cote, Office of the State Auditor

10:59:18 John Looney, Montana Bail Agents Association

11:01:33 John Willoughby, Montana Bail Association

Opponent Testimony:

None

Questions from Committee:

11:02:36 Rep. Jennifer Carlson

11:05:18 Sen. Chris Friedel-R

11:05:48 John Looney

Closing Statement:

11:07:34 Sen. Chris Friedel (R), SD 26, closed the hearing on SB 172.

HEARING ON SB 169 - Generally revise punitive damage laws

Opening Statement:

11:10:52 Sen. Greg Hertz (R), SD 6, opened the hearing on SB 169, Generally revise punitive damage laws.

Proponent Testimony:

None

Opponent Testimony:

11:21:03 Al Smith, Montana Trial Lawyers Association

Informational Witness Testimony:

None

Questions from Committee:

11:24:22 Rep. Jennifer Carlson

11:34:54 Sen. Greg Hertz-R

Closing Statement:

11:35:08 Sen. Greg Hertz (R), SD 6, closed the hearing on SB 169.

HEARING ON SB 268 - Generally revise short-term rental laws

Opening Statement:

11:36:02 Sen. Greg Hertz (R), SD 6, opened the hearing on SB 268, Generally revise short-term rental laws.

Proponent Testimony:

11:45:53 Leslie Everett, Self

11:49:11 Brian Wells, Self

11:51:45 Sam Sill, Montana Association of Realtors

11:53:10 DruAnn Robidou, Self

11:55:43 John Robidou, Self

11:56:55 Leslie Feigel, Livingston Chamber of Commerce

12:01:43 Stephanie Baucus, Mountain Homes

12:01:57 Kim Kaiser, Self

Opponent Testimony:

12:03:31 Andy Skinner, Self

12:05:54 Daniel Carlino, Self

12:07:41 Robin Turner, City Of Whitefish

12:10:15 Jake Brown, Shelter Whitefish

12:11:12 Caitlin Piserchia, Montana Sierra Club

12:13:14 Ethan Hanley, Associated Students of the University of Montana

12:13:36 John Metropoulus, Air BnB

12:16:28 Greg Lynch, Self

12:17:34 Derke Goldman, Self

12:18:45 Jana Richter, Self

12:20:04 Izzy Milch, Forward Montana

12:21:06 William Marchese, Self

12:22:05 Tirza Asbell, Montana Women Vote

12:22:36 Danielle Vazquez, Self

12:23:14 Alanah Griffith, Self

12:24:14 Renata Munfrada, City Of Bozeman

Informational Witness Testimony:

12:25:32 Eric Copland, Department of Labor and Industry

Questions from Committee:

12:26:11 Rep. Neil Duram

12:36:01 Sen. Greg Hertz-R

Closing Statement:

12:37:13 Sen. Greg Hertz (R), SD 6, closed the hearing on SB 268.

12:40:48 **Committee Discussion:** Meeting on Saturday

12:41:04 Chair Amy Regier

12:41:15 Rep. Jennifer Carlson

ADJOURNMENT

Adjournment: 12:41:45

Jamie Van Valkenburg, Secretary

Additional Documents:EXHIBIT(230324JUHaad)

EXHIBIT 1
DATE 3/24/2023
SB 216

SB216: Product Liability Reform

SB216 implements common sense reforms to current product liability law, protecting manufacturers and Montana businesses.

Montana's product liability law is one-sided and outdated in its approach. Current statute treats manufacturers and retailers alike, even though they act in very different capacities. This bill will establish reforms to allow additional evidence and defenses necessary for the fair treatment of manufacturers and retailers.

Creates comparative fault defense

Allows product sellers to show that another party contributed to the injury.

Strengthens product misuse defense

Product sellers to use the defense that the product was used contrary to an express warning or instruction that came with the product.

Creates defense for government safety regulation compliance

If the product complied with mandatory government safety regulations and requirements, this bill would allow that as a defense in court.

Creates 10-year statute of repose

This addition recognizes that most products have a limited useful life and wear out, so it is defensible if the product is over 10 years old. Reasonable exceptions remain.

Allows innocent-seller defense

If a retailer sells a product unchanged from the manufacturer, the innocent seller should not be held liable - the liability rests with the manufacturer. Reasonable exceptions remain.

Adds defense of no safer alternative

Products innovate quickly, but if there was no safer alternative in existence at the time of sale, the seller can raise that defense.

MONTANA CHAMBER OF COMMERCE | WE MEAN BUSINESS |

EXHIBIT 2
DATE 3/24/2023
SB 216

The Montana Trial Lawyers [MTLA] opposes SB 216 as it relieves corporations of full accountability and responsibility for their defective products that harm and kill Montanans. MTLA's position flows from our support of the basic principle that individuals, business entities and governmental entities should be accountable and responsible for their actions or omissions that cause harm to another.

This principle is set forth in Article II, Section 16 of our Montana Constitution which provides that "Courts of justice shall be open to every person, and speedy remedy afforded for every injury of person, property or character." Article II, section 26 guarantees our right in Montana to a trial by jury in civil matters, as well as criminal matters. This mirrors the 7th Amendment to the U.S. Constitution that protects our right to a trial by jury in civil matters. We support the constitutional obligation found in Article XIII, Section 1 "(2) The legislature shall provide protection and education for the people against harmful and unfair practices by either foreign or domestic corporations, individuals, or associations."

SB 216 asks you to do the opposite - to protect corporations from Montanans exercising their right to access our courts seeking a remedy for injuries caused by defective products.

SB 216 would overturn decades of Montana law. It eliminates strict liability, a step that only 8 other states have taken – AL, DE, LA, MA, MI, NC, OK & VA.

SB 216 would bar product liability suits for products after 10 years. Page 5, line 21

SB 216 would bar product liability suits for products whose "formula, design, labeling, warning, or instructions complied with mandatory safety statutes, standards, or regulations adopted by the federal or state government or an agency of the federal or state government." Page 6, Line 13

SB 216 would bar product liability suits for products that were "subject to premarket licensing or approval by the federal or state government or an agency of the federal or state government." Page 6, Line 19

Attached are just a few examples of Montanans that were harmed by defective products, Montanans who would have had no remedy if SB 216 were in effect when they were injured. Kill SB 216 to assure that in the future Montanans like these will have a remedy.

Al Smith, MTLA, 439-3124, mtla@mt.net

Please vote NO on SB 216. If SB 216 becomes law, Montanans like those below would have no legal recourse against the corporations whose defective products maim and kill.

DEFECTIVE TIRE KILLS FAMILY

We represented the families of a couple, along with their baby, who were killed because a tire of an oncoming vehicle lost its tread, causing loss of control.

The problem with the tire was the lack of a nylon belt. Documents showed the manufacturer knew of the problem and did not add the nylon belt in order to save money. That vehicle, a large truck crossed the centerline hitting and destroying their car.

The failed tire was more than ten years old, and complied with government standards but was known to fail in other instances. **There would be no remedy for the families under this bill.**

MINE WORKER SEVERELY INJURED

We represented a mine worker operating a cable laying machine in a strip mine. The machine did not have falling object protection. Debris fell from the high wall and penetrated the cab of the machine causing the operator paraplegia and brain damage. The jury verdict allowed the operator to obtain the care and equipment he needed to live, as well as wage replacement.

The machine was more than ten years old, and complied with minimal government standards. There would be no remedy for this worker under this bill.

CHILD DIES BECAUSE OF DEFECTIVE HOT TUB

A 10 year old girl was killed when her hair was sucked into and entangled behind the suction cover of the hot tub in a pool/spa complex at a hotel pool. The suction cover's design was defective. It had killed several children before and the manufacture knew this and did nothing. Even though this cover had killed several other children the manufacture did nothing to recall it or change its design. It was only after a courageous Montana family brough suit against this out of state corporation that eventually the consumer product safety commission forced the manufacturer to recall the cover. **If SB 216 had been in effect this claim would have been barred since the cover met federal standards. This cover would have continued to kill and drown innocent children.** SB 212 does nothing for Montana families and kids and only protects out of state corporations.

RANCHER BURNED BY DEFECTIVE EQUIPMENT

A rancher from Eastern Montana sustained severe burns when the 2001 Rogator he was operating started on fire. The Rogator was manufactured by AGCO. The fire was started from an electrical short in the battery cable. The location and routing of the cable made it susceptible to shorting out and causing a fuel fed fire.

If SB 216 had been in effect this rancher would not have been able to bring a claim as the Rogator was more than 10 years old and met minimum federal safety standards. This bill protects large out of state corporations at the expense of ordinary Montanans.

HIGHWAY WORKER SEVERELY INJURED

We represented a college student operating a paving roller on a road under construction. It was not equipped with rollover protection, and when the roller tipped off the edge of the road she suffered catastrophic brain injury. She now needs full time care.

The machine was more than ten years old, and complied with minimal government standards. There would be no remedy for this worker under this bill.

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NURSING CAREER ENDED BY DEFECTIVE TRUCK

Tricia McCullough, a 22-year-old college student, was driving her truck back to school after spending time with her family for the holidays. She hit a patch of black ice, the truck rolled and the roof crushed down to even with the bottom of the window, severely injuring her and leaving her paralyzed from the neck down. Her truck was 17 years old. The truck failed to meet minimum federal safety standards. At the time of the crash, Tricia had been only months from graduating college as nurse; instead, she is paralyzed and will require a lifetime of care. The manufacturer was sued for its defective truck and Tricia has a chance to recover funds to take care of her medical and life needs.

If SB 216 had been in effect at the time of Tricia's accident, she would not have been able to sue the manufacturer. Looking at Section 2, page 5, lines 21-22, Tricia couldn't sue because her car was more than 10 years old.

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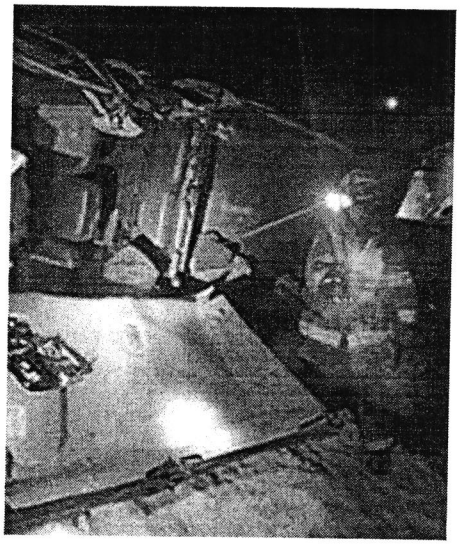
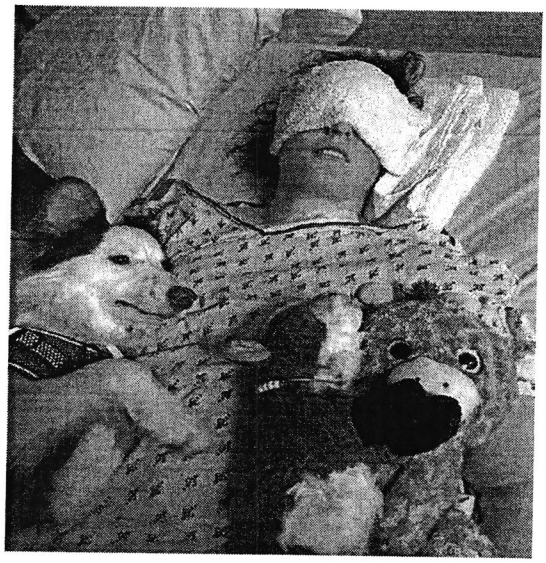
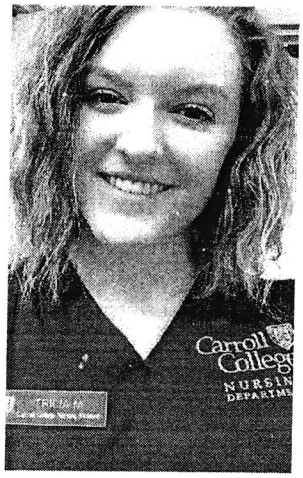




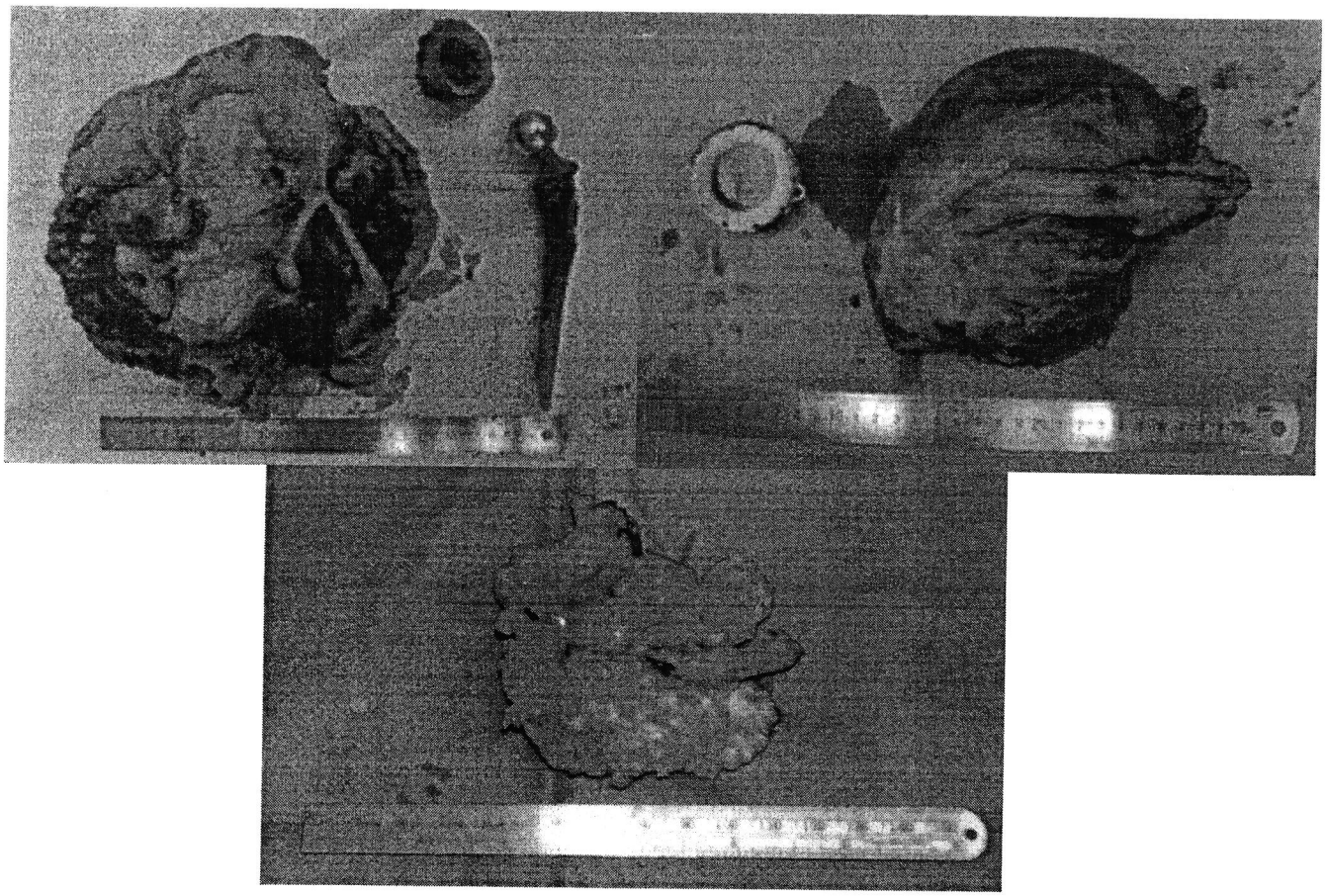


March 23, 2023

To Whom It May Concern:

The five case studies below outline five Montanans' experience with dangerous Johnson & Johnson metal-on-metal hip replacements, and how SB 216 would have prevented them from having any recourse against the large out of state corporation who manufactured and sold the dangerous devices, injuring countless Montanans such as themselves. Johnson & Johnson was just one of the manufacturers selling dangerous metal-on-metal hips to Montanans, and just one of the many out of state corporations who would enjoy protection from accountability for injuring Montanans under SB 216.

Throughout these case studies you will find several references to pseudotumors and tumors caused by heavy metals infiltrating the tissues surrounding the faulty hip prosthetic devices. Below are photographs of pseudotumors found during the removal of these types of dangerous devices. These tumors are caused when the body tries to seal off heavy metal contamination by encapsulating it in tissue. They are just one of the injuries caused by dangerous metal on metal hip products. Under SB 216, Montanans would have no avenue for legal recourse against the companies who knowingly manufactured and then marketed these products in our State.



CASE STUDY 1 - name withheld out of respect for the family and estate's privacy

John Doe, a professional from Montana, was implanted with a Johnson & Johnson Pinnacle metal-on-metal hip prosthetic on May 10, 2005. Mr. Doe had multiple instances of groin and hip pain, hip dislocations, and infections after receiving the implant. Mr. Doe received two revision surgeries, and ultimately discovered that the ongoing complications were due to a faulty hip prosthetic device in November of 2015. Following his second revision on November 16, 2015, Mr. Doe was no longer able to walk and experienced an extreme deterioration in his health due to ongoing infections in the area. Ultimately, Mr. Doe took his own life in June of 2017. Mr. Doe was an active outdoorsman and well-respected professional, and his family believes the significant deterioration in his health and quality of life due to his metal-on-metal hip was a large contributing factor in his death.

Mr. Doe did not discover that the deterioration in his health and quality of life was due to a faulty hip prosthetic until 10 years and 6 months after it was implanted. If SB 216 was in effect at the time Mr. Doe discovered the source of his injuries, or at the time his family and Estate discovered the likely reason he decided to take his own life, they would have had no recourse against Johnson & Johnson and its multiple subsidiaries in charge of producing, marketing, and selling these devices to him and other Montana citizens. Mr. Doe and his family and estate would have had no recourse against the large out of state corporation that directly harmed him and likely contributed to his death. This device was cleared by the FDA for use, but has an extensive history of harming Montana citizens such as Mr. Doe.

CASE STUDY 2 - Keith Doe

Keith Doe, from Helena, Montana, was implanted with a Johnson & Johnson ASR metal-on-metal hip prosthetic in 2006 and a Johnson & Johnson Pinnacle Metal-on-metal hip prosthetic in 2008. In October of 2022, he saw his doctor for concerns with hip pain and difficulty walking. His doctor informed him that he currently had two hip prosthetics proven to cause tumors, osteolysis, pseudotumors, and heavy metal poisoning. After further investigation, Mr. Doe's doctors confirmed he was suffering from heavy metal poising and recommended he have the metal-on-metal hip implants removed as soon as possible. Mr. Doe had the ASR removed in October of 2022.

Mr. McGuire was never warned that he had two dangerous medical devices in his body. When he discovered this, it had been 16 years since the first device, the ASR, was implanted and 14 years since the second device, the Pinnacle, was implanted.

If SB 216 had been in effect at the time he discovered he was being poisoned and injured by the dangerous metal-on-metal hips inside his body, Mr. Doe would not have been able to seek any accountability from Johnson & Johnson and its multiple subsidiaries in charge of producing, marketing, and selling these devices to him and other Montana citizens. Mr. Doe would have had no recourse against the large out of state corporation that directly harmed him and left him requiring significant medical care. Defendants could also argue a defense under SB 216 that a government gave some form of approval, but both products received little review and have an extensive history of harming Montana citizens such as Mr. Doe.

CASE STUDY 3 - Daniel Doe

Daniel Doe, from Helena, Montana, was implanted with a Johnson & Johnson Pinnacle metal-on-metal hip prosthetic in 2008. In 2022 he saw his doctor for severe hip pain and trouble walking and symptoms of heavy metal poisoning. His doctor informed him that he may be experiencing sickness due to his metal-on-metal hip prosthetic, and upon further testing confirmed that he was experiencing heavy metal poisoning. Mr. Doe underwent a surgery to remove the dangerous device on April 26, 2022. In this surgery, his doctors found that his bone had been severely deteriorated due to the device to the point that they had to break his bones to remove it. They also discovered severe osteolysis and a large tumor caused by the device.

Mr. Doe was never warned that he had a dangerous medical device in his body. When he discovered this, it had been 14 years since the device was implanted.

If SB 216 had been in effect at the time he discovered he was being poisoned and injured by the dangerous metal-on-metal hip inside his body, Mr. Doe would not have been able to seek any recovery Johnson & Johnson and its multiple subsidiaries in charge of producing, marketing, and selling these devices to him and other Montana citizens. Mr. Doe would have had no recourse against the large out of state corporation that directly harmed him and left him requiring significant medical care. Corporations could also argue a defense under SB 216 that a government gave some form of approval, but both products received little review and have an extensive history of harming Montana citizens such as Mr. Doe.

CASE STUDY 4 - Rosalie Doe

Rosalie Doe, from Butte, Montana, was implanted with a Johnson & Johnson Pinnacle metal-on-metal hip prosthetic on February 27, 2009. In 2019, her doctors informed her that her metal-on-metal hip was causing her pain and metal poisoning. On October 18, 2019, Mrs. Doe underwent removal of the device, and during the operation, her doctors found that the device caused severe necrosis of her femur and surrounding tissues, a large tumor, and osteolysis.

Mrs. Doe was never warned that she had a dangerous medical device inside her body. When she discovered this, it had been 10 years and 5 months since the device was implanted.

If SB 216 had been in effect at the time she discovered she was being poisoned and injured by the dangerous metal-on-metal hip inside her body, Mrs. Doe would have missed any opportunity for recourse by just five months. Mrs. Doe would not have been able to seek recovery from Johnson & Johnson and its multiple subsidiaries in charge of producing, marketing, and selling these devices to her and other Montana citizens. Mrs. Doe would have had no recourse against the large out of state corporation that directly harmed her and left her requiring significant medical care. Corporations could also argue a defense under SB 216 that a government gave some form of approval, but both products received little review and have an extensive history of harming Montana citizens such as Mr. Doe.

CASE STUDY 5 - Robert Doe

Robert Doe of Kalispell, Montana was implanted with a Johnson & Johnson Pinnacle metal-on-metal hip prosthetic on June 17, 2009. More than 10 years later, testing revealed he was experiencing heavy metal poisoning due to the device. On April 7, 2021, Mr. Doe underwent removal of the device. During the operation his doctors found that he suffered a large tumor caused by metallosis and deterioration of the bone and tissue due to heavy metals.

Mr. Doe was never warned that he had a dangerous medical device inside his body. When he discovered this, it had been 10 years and 7 months since the device was implanted.

If SB 216 had been in effect at the time he discovered he was being poisoned and injured by the dangerous metal-on-metal hip insider his body, Mr. Doe would have missed any opportunity for recourse. Mr. Doe would not have been able to seek recovery from Johnson & Johnson and its multiple subsidiaries in charge of producing, marketing, and selling these devices to him and other Montana citizens. Mr. Doe would have had no recourse against the large out of state corporation that directly harmed him and left him requiring significant medical care. This device was cleared by the FDA for use, but has an extensive history of harming Montana citizens such as Mr. Doe.

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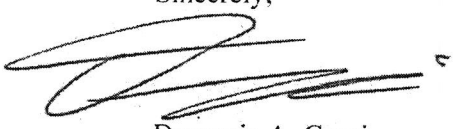
If passed, SB 216 will protect large corporations at the expense of innocent Montanans. In many instances, the law will pass the cost of medical care and lost income for these injuries to the state. This bill will prevent injured Montanans, such as the individuals above, from holding large out of state corporations accountable when they manufacture, distribute, and sell dangerous devices that injure innocent people. Please do not hesitate to contact the undersigned if you wish to discuss this in further detail or have any questions regarding this letter or the reasoning behind our opposition of SB 216. Thank you.

Sincerely,



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MACHINE SHOP WORKER BURNED

A worker in a machine shop wearing a required uniform that was made of a large percentage of polyester. It was known to the clothing industry that when exposed to fire, these fabrics ignite easily and violently. When they do, they fuse to the skin in a process known as thermoplastic fiber melt. **This fabric met minimum government standards. According to the experts - even the defense - so would a piece of newspaper.** The worker was exposed to a flash fire in the shop and was catastrophically burned because his polyester blend uniform burned like a torch and fused to his skin. Cotton uniforms were an alternative and would have avoided what happened. T**he current bill would have allowed the out of state manufacturer to escape liability based on a ridiculous minimum government standard test.**

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ASBESTOS LACED PRODUCT KILLS SINGLE MOTHER

38 year old, single mother contracts terminal cancer from multibillion dollar household company from asbestos-containing baby powder used on her daily by her mother when she was a baby and young child. This company knows it has got major problems and voluntarily stops selling baby powder contaminated with asbestos in US, but continues to sell it abroad to ensure it keeps it profit margin intact. This company then tries to hide behind bankruptcy, but gets thwarted by the federal courts. Meanwhile, this Montana woman, working in the restaurant service industry, dies a miserable death after putting up the fight of her life, having her right lung removed, chemo and radiation. She leaves behind an 8 year old son, who was her entire life. **If this law passes, the massive national corporation gets off scot-free by relying on the 10 year statute of repose and FDA approval.** This law protects nobody in Montana and is largely a massive gift to out of state corporations.

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LINEMAN'S BRAIN DAMAGED

Gene M. of Glendive, Montana, was employed as a lineman by Mountain States Telephone Company. He was operating a backhoe digging a trench in connection with a cable relocation. He encountered a culvert which he could not dig under with the backhoe. He entered the trench to dig under the culvert with a shovel. While doing so the trench caved in on him.

He was wearing a plastic helmet manufactured by an out-of-state corporation. The helmet met industry standards for withstanding being struck from above by a given weight. Testing demonstrated that the ridge running front to back was the strongest part of the helmet and satisfied standards. The side of the helmet was never tested for side impacts. When the side of the helmet was tested by our experts we discovered that the side of the helmet popped inward with great force. A rock had struck Gene's helmet on the side and popped in knocking him unconscious. He was found later with his helmet on his head and a deep dent in the side.

Gene suffered a skull fracture and extensive hypoxic brain damage. His wife and child provided home care. He was wheelchair bound. He could not carry on a conversation with his Vietnam Veteran card playing buddies. However, testing revealed he could still recall numbers and play cards.

Our products liability lawsuit demonstrated that the industry standards were inadequate in two respects: 1) the testing required of the manufacturer did not involve a side-impact, and 2) a warning in the helmet did not divulge the limited protection provided by the side of the helmet. We settled the case on a structured basis which provided income to Gene and his wife Leslie for their lifetimes. Later, we discovered that the manufacturer had developed a stronger design for their helmet which eliminated the pop-in effect and changed their warning label which included a specific warning of the limitations of side-protection. This occurred in 1985. Gene and his wife were in their early 30s. Workers' Compensation benefits provided minimal benefits. Under the settlement they were able to stay in their home and send their child to college. Leslie died a few years back. Gene is still alive living in a nursing home in Glendive. He continues to play cards with the other residents.

Had SB 216 been in effect the manufacturer would have been immune from liability because its product met industry standards for head protection. Montana has a strong product liability law which protects our citizens from dangerous products sold in Montana. On behalf of this family I urge you to vote NO on SB 216.

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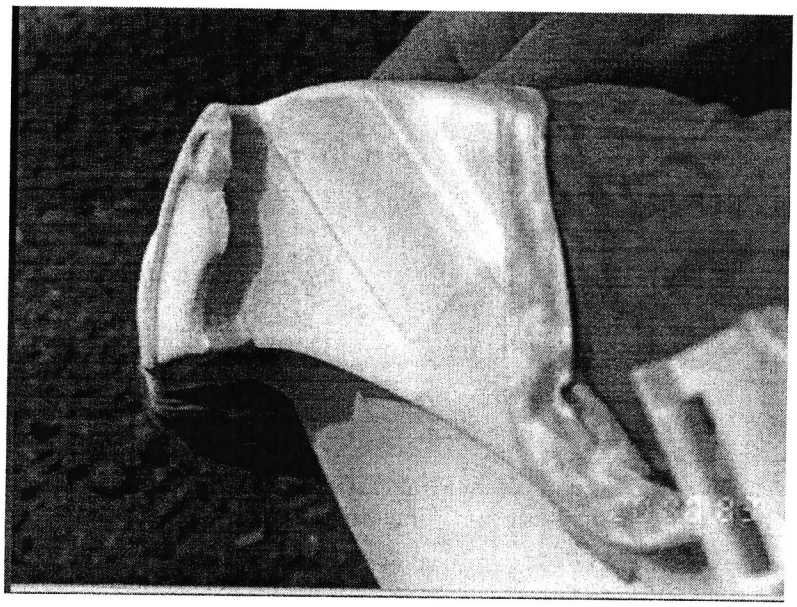
Malcolm v. Evenflo
2009 MT 285, 352 Mont. 325, 217 P.3d 514.

Jessi Malcolm was driving home on Highway 89 outside of Livingston, Montana, when a motorist driving the opposite direction forced her off the road by attempting to pass an RV against a double yellow line. Jessi's car rolled three times.

At the time, Jessi's 4-month old son, Tyler, was *properly* belted into an infant child safety seat manufactured by Evenflo Corporation. During the rollover, the Evenflo safety seat broke, permitting the seat to be ejected from Jessi's car. The safety seat, with Tyler still belted inside, flew more than 60 feet.



Tyler died from the injuries sustained when his "safety" seat hit the ground.

Long before Tyler was killed, Evenflo knew that this product had broken in exactly this manner both during testing and in real-world rollover accidents, but it concealed this information.

Knowing of this very real danger, Evenflo marketed this product through advertising proudly announcing that it *complied* with all federal motor vehicle safety standards -- which was true.

Federal safety standards are *minimum* standards. Compliance with these minimum standards does not assure that a product is reasonably safe. **If SB 216 had been a part of Montana law at the time Tyler was killed, Evenflo would have walked away, scot-free.**

Montana law made it possible for a conservative Livingston Montana jury to hold Evenflo accountable. Montanans – your constituents – are safer, and justice was done, only because then-existing Montana law recognized that a national or international manufacturer's compliance with minimal federal governmental standards has almost nothing to do with actual product safety.

Protect your constituents. Kill SB 216.

O'Brien v. General Electric
13th Judicial Dist. Ct., Yellowstone County

Jack O'Brien (a Miles City resident) suffered a back injury in an industrial accident. He underwent back surgery in Billings.

In a follow-up appointment, the Billings surgeon ordered an x-ray film of the back to confirm that it was healing properly.

O'Brien reported to the radiology lab as ordered. The X-ray tech (a young woman) helped O'Brien get on the table. The x-ray film had to be taken at an angle. The tech properly "pushed the button" to elevate O'Brien's lower body. When O'Brien was at the right angle, the tech hit the button to stop the table. It did not respond, continuing to elevate O'Brien's lower body. She grabbed onto O'Brien to keep him from sliding off. He, using his arms and hands, grabbed on to the sides of the table. Eventually the angle became so steep that he slid off the table.

The table was equipped with a "kill" switch, but given that the tech had tried to hold O'Brien the switch was out of her reach.

As a result of this incident, O'Brien underwent further back surgeries and never returned to work. Because this occurred while O'Brien was receiving medical treatment for an industrial accident, he continued to receive Montana Workers' Compensation Act benefits until his death.

This was not the first General Electric table to malfunction in this manner. GE had actual knowledge of this defect but had done nothing to correct it. The labels on this table proclaimed that it met all applicable safety standards.

If SB 216 had been the law of Montana when O'Brien was injured, General Electric would not have been held responsible.

Please kill SB216. Protect Montana your constituents.

Bowers v. A. B. Chance
U.S. District Court-Billings Division

Gene Bowers was an experienced electrical lineman working on a crew near Lavina installing new power poles and then transferring the lines from the old poles to the new poles.

One tool used to move the lines is a crossarm gin. The gin (photo attached) was manufactured by a Missouri corporation (A. B. Chance).

The gin used on the day of his injury was brand new—never even out of the box until it was needed to transfer wires. Unbeknownst to Bowers (or any of the other crew members), the gin had been manufactured incorrectly. As shown in the photo, the arms at the bottom are supposed to be perpendicular to the ears at the top. However, on the gin used by the crew the arms were in the same plane as the ears.

Because of the defect, one of the arms broke when stress was put on the gin causing it to "fly down the wire" striking Bowers in the head. Although seriously injured, his life was saved by his helmet.

A.B Chance never could explain how this defectively manufactured product was sent into the market—despite its quality control system which it claimed to be "fool proof."

Montana law made it possible to recover damages for Bower's injuries AND partially reimburse the Montana Workers' Compensation carrier for benefits paid by reason of the injuries suffered because of a defective product. Montana law also precluded A. B. Chance from arguing that it was somehow the workers' fault for using the defective product.

Protect Montana citizens. Kill SB 216.

OPPPOSITION TO SENATE BILL 216
WRITTEN TESTIMONY OF BILL ROSSBACH, ROSSBACH LAW, MISSOULA

I am writing in opposition to the product liability bill SB 216. I have practiced law for more than 40 years and have handled more than 50 product liability cases to conclusion. I can say without any hesitation that this bill provides essentially no benefit to the vast majority of Montanans and does significant and potentially devastating damages to Montana citizens and to the budget of the State of Montana.

Product liability cases often result in catastrophic injuries. These catastrophic injuries require huge expenditures for life care and always result in loss of income. Most of the people that are so injured do not have the resources to cover these expenses and losses. As a result, these costs are borne by the taxpayers of Montana. In contrast, the benefit of these amendments would be almost exclusively to international corporations who make millions on their products, even when they might be defective.

The doctrine of strict liability has been part of the English and American common law for centuries. A prime example of long established strict liability is liability for a nuisance. For product liability the doctrine was adopted by courts, including a traditionally conservative Montana Supreme Court, approximately 50 to 60 years ago. In Montana, Justice John C. Harrison, writing for the unanimous court, said that the doctrine was adopted because of the disparity of information between the average consumer and the manufacturers of those products. As products became more complex from an engineering and manufacturing basis, the average consumer would have no ability to know what risk or problems there might be with the product. Only the manufacturer that designed the product and manufactured the product can know the potential danger. In other words, the purpose of this doctrine was to level the playing field and provide an incentive for safety. Only through litigation can a consumer obtain information the manufacturer had during the design, engineering, and manufacturing of the product and what the manufacturer could have learned about defects and

dangers once the product was sold and in use. I believe every state in the country has the same or similar version of this doctrine.

In 1987, to ensure that these protections for Montana citizens were guaranteed but not unreasonably expanded, a majority Republican legislature put the essential doctrine into statute and it has worked well for Montana citizens ever since. I will describe here a sampling of cases representing Montana citizens that would be excluded if the proposed amendments are put in place.

Unfortunately, and coincidentally, last month we moved approximately 500 boxes of case materials from my law office to a storage garage and access to older non digital cases is nowextremely difficult. Because a significant part of my cases were handled before everything was digital, I have only been able to access a portion of the cases. However, I have enough recall of the facts of these to provide a brief narrative for each you. In every one of these cases, proposed provisions in the bill would have prevented my clients from bringing their case and they would have been faced with disastrous economic consequences for their serious injuries or death and the out of state Fortune 500 corporate manufacturer would have faced no consequences.

<u>Mr. A. v Dow Chemical et al</u>

Mr. A grew up in Phillips County. A star high school athlete, he worked summers on a crop spraying crew. His crew used the traditional methods for applying chemicals from the air. He was the flagger on the ground who marked the margin line or limit of where chemicals were sprayed from the plane so the pilot would know where to spray the next strip. As such Mr. A unavoidably was sprayed with chemicals every time the plane passed over. Thirty years later he was diagnosed with cancer, Non-Hodgkin's Lymphoma and died during his prime wage earning career. The chemicals in the spray included 2,4-D and 2,4,5-T, the same chemicals later used in Agent Orange. After litigation the case was settled for the family that lost substantial income due to Mr. A's death. **Because the commercial chemicals were all government approved, the family would not have been able to bring the lawsuit.**

Mr. B v. Jeep/Chrysler

Mr. B was a resident of Mineral County. He was working installing power lines to earn money to be able to return to school at the University of Montana. He had an older Jeep CJ5. One night driving home he hit a patch of black ice causing the vehicle to swerve slightly off the road. When the wheels hit the soft shoulder the Jeep rolled over several times. Because the rollbar did not protect him he suffered a spinal cord injury and was paralyzed from the waist down. The combination of a short wheelbase, narrow track and high center of gravity made the Jeep extremely dangerous. The short wheelbase made it susceptible to "yaw" or turning sideways and once the car was even a little sideways any change in surface could cause the Jeep to roll because of the narrow track and high center of gravity. As a result of two Montana cases, just a few years later after our case and another Montana cases were settled, Chrysler stopped making the CJ5 and replaced it with the much safer Wrangler. Mr.B's settlement provided him his lost income and the resources to modify his home and graduate from UM. **Because his vehicle was more than 10 years old and had passed all government safety standards provisions in this bill would have prevented his recovery.**

Mrs. C. v. Ford

Mrs. C was a resident of Lincoln County. She owned a Bronco II that Ford intentionally marked as an SUV for women, modelled on the Jeep CJ5. She was driving it near her home in the late winter. As she came around a corner she saw a huge new chuckhole in her lane and traffic coming from the other direction. She tried to steer around it but in swerving to avoid it her vehicle tripped and rolled over, CJ5 partially crushing the roof and severing her spinal cord resulting in paraplegia. Ford used the Jeep CJ5 chassis as the model for the design of the Bronco, with essentially the same dimensions as the Jeep with a high center of gravity, narrow track and short wheel base making it as dangerous at the CJ5. **The Bronco II passed all vehicle safety standards, including the standards for roof crush.** Provisions in this bill would have prevented Mrs. C from bringing her case that eventually settled and provided her resources to improve her life in a wheelchair.

Montana Attorney General v. Vioxx.

In this litigation I had the privilege and honor to represent the Attorney General against Merck for violations of Montana law in the false marketing of the NSAID pain drug Vioxx. Although this was not an individual product liability case, the information we obtained in litigation showed that the drug was designed, manufactured, and marketed with a high risk of cardiovascular injury but Merck still obtained FDA approval. It was taken off the market within 3 years because of the cardiovascular risk. Expert testimony in the case indicated that more than 300 Montanans died from taking Vioxx and many more likely lived but with post heart attack damages. I do not know how many Montanans filed individual product liability suits but **under the provision in SB 216 no individual Montanan killed or injured would have been able to sue Merck because the drug Vioxx was FDA approved.**

Mrs. D v. Johnson & Johnson/Depuy metal on metal hip

Mrs. D from Helena has a congenital condition that resulted in her needing to have her hip replaced at a very young age. Based on her young age and active, athletic lifestyle, on information from the manufacturer about the longevity of metal on metal hips, her doctor recommended she use a J&J/Depuy hip. At about year 5 she began having some problems with pain in the hip. Her doctor wanting to avoid doing a second surgery so soon because of potential worsening with every revision urged her to wait as long as she could before replacing the first hip. After 10 years her condition had deteriorated and her blood work indicated she had excess metal in her blood so they had no choice but to replace the first hip. During surgery the doctor found such severely damaged muscle and other tissue that it made the surgery difficult and will likely cause problems and further surgeries the rest of her life. **Under the proposed provisions in this bill because the hip implant was more than 10 years old and had full FDA approval Mrs. D would have had no ability to recover any compensation for the permanent damage and disability the defective metal on metal hip caused.**

I have represented approximately 15-20 Montana clients with hip failures like Mrs. M who would have not been able to recover for their injuries because of the provisions in this bill. The first successful case in the United States against J&J/Depuy for a dangerous defective metal on metal hip was for a veteran Miles

City. His successful case led eventually to Johnson and Johnson settling thousands of similar cases.

Mr. E. v. Toyota

Mr. E was from Flathead County. His family bought a Toyota pickup in Flathead County in a private sale. Driving home from Oregon, Mr. E hit black ice and his truck rolled causing the door latch to fail and the roof to crush. Mr. E died from traumatic head injuries as a result. **We would not have been able to sue and recover compensation for the family from this loss because the door latch and the roof pillars all met federal motor vehicle safety standards.**

Mrs. F v. Chrysler/Ram

Mrs. F lives in Ravalli County. On her way to work in the early morning driving her Dodge Ram pickup, she slid sideways on some black ice. Tragically there was another car coming the other direction and it T-boned Mrs. F causing her truck to roll. In the roll her seatbelt latch failed and came undone causing Mrs. F to be thrown about in the truck cab and severing her spinal cord. Her case settled. **The seatbelt latch passed federal motor vehicle safety standards and under the proposed provisions of SB 216 that would have prevented her from bringing an action to provide her resources to deal with her catastrophic injuries.**

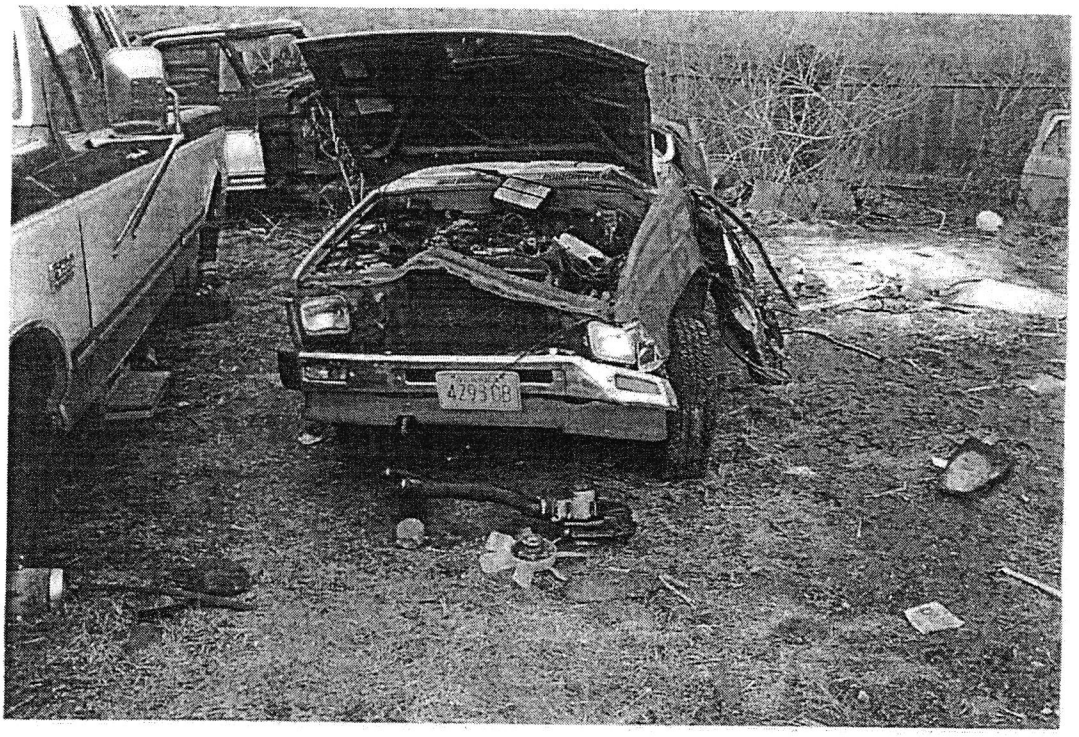


EXHIBIT 3
DATE 3/24/23
SB 216

TODD COPENHAVER V. CAVAGNA, AMERIGAS, ALBERTSONS

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MONTANA
BILLINGS DIVISION

CV 19-71-BLG-SPW-TJC

Todd is a mechanic in Glendive, originally from Ovando. He was severely burned due to a propane leak from a valve on a BBQ cylinder. He was at his in-law's house for a birthday party for one of his kids. His father-in-law hooked up the propane cylinder and lit the barbeque. The leak started a fire. Todd came out of the house onto the deck and turned the valve off, removed the melted nut and hose, and pulled the tank away from the house so it would not endanger the children inside. As he was moving it, the PRV blew and turned into a flame thrower, spraying Todd with burning propane. He was life flighted to Colorado and spent three weeks in a burn center. He has permanent scars on his legs and arms and they hurt and bleed, especially when he is on his feet for a long time doing mechanic work.

The valve was made by an Italian company. It had leaked and burned many other people. The problem was documented at the National Petroleum Gas Association for several years before Todd was burned. The problem was a defective rubber seal inside the valve that became misshapen and degraded over time and let gas leak out. There were proposals to replace the Vietnam era rubber with more durable material and to change out the valves every 10 years as they do in Canada, where they have far fewer injuries. But Cavagna and Amerigas, along with the rest of the industry, killed the proposals.

Cavgana argued that the injuries were Todd's fault because he shouldn't have tried to move the tank away from the house. They also argued his injuries came from running to his wife to pull her away for the flame thrower. These defenses were rejected by the Court based on current law, <u>but the proposed changes in this bill may well have prevented him from recovering compensation.</u>

Here is what the defective Italian valve did to Todd in 2017:

Montana State Legislature

2023 Session

Additional House Documents

- Business Report
- Roll Call -Attendance
- Standing Committee Reports
- Tabled Bills
- Fiscal Reports [if any]
- Roll Call Votes
- Proxies signed in ink
- Visitor's sign-in sheet.
- Informational Item's
- Witness Statements if any,
- Zoom/Internet Testimony Information & index
- Any other type of documents such as:
  @ Petitions, {if any} Emails, all documents given to Committee Secretary before & after meeting.
- Public Testimony documents may or may not be scanned, they will be on file at the Montana Historical Society.
- Disclaimer: within the online minutes document you will see vacate spaces within the document. The LAWS II system creates these blank areas they are not loss of information.

The original exhibit/items are on file at the Montana Historical Society and may be viewed there.

Montana Historical Society Archives,
225 N. Roberts, Helena, MT 59620-1201
E-Document Specialist Susie Hamilton

BUSINESS REPORT

MONTANA HOUSE

REGULAR

(H) Judiciary

Date: 03/24/2023 **Time:** 8:00 AM

Place: Capitol **Room:** 137

BILLS and RESOLUTIONS HEARD:

HB 479 Provide appropriation for DOJ to assume law enforcement PL-280 - Rep. Joe Read

SB 169 Generally revise punitive damage laws - Sen. Greg Hertz

SB 172 Generally revise bail bond laws - Sen. Chris Friedel

SB 180 Generally revise court-appointed special advocate and guardian ad litem laws - Sen. Dennis Lenz

SB 184 Revise procedural requirements in child abuse and neglect proceedings - Sen. Dennis Lenz

SB 216 Revise laws related to litigation and products - Sen. Steve Fitzpatrick

SB 268 Generally revise short-term rental laws - Sen. Greg Hertz

SB 277 Revise laws relating to victims of crime - Sen. Shane Morigeau

EXECUTIVE ACTION TAKEN:

Comments:

Amy Regier

Rep. Amy Regier-R, Chair

House

Roll Call

(H) Judiciary

DATE: 03/24/2023
TIME: 8:00 AM

NAME	PRESENT	ABSENT/EXCUSED
Ler, Brandon	X	
Bishop, Laurie	X	
Mitchell, Braxton		X
Sheldon-Galloway, Lola		X
Smith, Laura	X	
Deming, Lee	X	
Knudsen, Casey	X	
France, Tom	X	
Carlson, Jennifer	X	
Howell, SJ	X	
Hinkle, Caleb	X	
Duram, Neil	X	
Hawk, Donavon	X	
Zephyr, Zooey		X
Kmetz, Greg	X	
Etchart, Jodee	X	
Hinkle, Jedediah	X	
Rusk, Wayne	X	
Abbott, Kim		X
Regier, Amy	X	

WITNESS STATEMENT

To: (H) Judiciary

From: Friedlander, Ethan email:ethan_duanef@yahoo.com, Cell: 406-558-9601

Date: 03/24/2023

Re: Opposition- HB 479

Good morning, Chair, and members of the committee,

My name is Ethan Friedlander F-R-I-E-D-L-A-N-D-E-R, and I am a Kootenai Tribal Member of the Confederated Salish and Kootenai Tribes in opposition to HB 479

P.L. 280 originates from the termination era when Indians stood in the way of the encroachment of tribal lands in the effects of the Dawes Act or Allotment Act, which the influxes of non-Indians to the reservation created the involvement of non-Indian policing within the borders of a reservation. Lake County has used P.L 280 as a means of abusing this system to create a situation of abuse and oppression against the CSKT tribal membership that is based on land specifically set aside for the exclusive use and benefit of the Salish, Kootenai, and Pend Oreille.

In MCA 2-1-305 Jurisdiction on Indian Land it states, "nothing in this part shall deprive the Indian tribe, band, or community from carrying on its age old tribal dances, feasting, customary Indian celebrations or in any way try to destroy the Indian culture". It is the effects of P.L 280 that have destroyed Indian culture that we are so direly fight to retain.

We just buried one of our precious elders who was in prison for a substantial amount of time for DUI, but when he was granted parole he had to sit in prison for well over a year because Lake County Probation and Parole alienated him from his own reservation, which directly conflicts with the Jurisdiction on Indian Lands and Indian Culture act.

The overpacking of the Lake County Jail has led to the inability to properly take in harsher crimes when committed and this creates the reality that non-violent, non-dangerous tribal members continue to sit in Lake County detention facility for five months on an obsolete offense. These are all DUI related offenses, victimless traffic violations yet lake county releases violent predators, drug dealers, and dangerous offenders to the streets in order to keep the inmate population majority Indian, which essentially means there is a bounty on tribal members.

For example: the Missoulian reported in March 2018 that a school bus driver distributed dangerous drugs and endangered lives of children while doing so. Also in 2018, according to the Valley Journal Polson postal carriers are caught with half a pound of meth and 10 firearms and they were booked and released.

I call on this body to oppose this bill, do a study before considering this bill.

The purpose of this bill is much more complex than just criminal jurisdiction on Indian land. Especially when we all know it is substance abuse issues, generational trauma, and a vicious cycle that leads us into the criminal justice system. So let my tribe alleviate this problem for you, let self-determination efforts take effect through tribal court, treatment court, and peer support specialists do their work. My people are recovering everything we lost due to the failed policies of PL 280, and we are decolonizing our minds, our homes, our lives, and our lands. The Flathead Indian reservation has reached its carrying capacity, and this bill is a non-issue because of how it originates... it originates from newcomers resulting in yet another land grab on the Flathead Indian Reservation.

Please Oppose HB 479

Thank You

SB 169

EXHIBIT 6
DATE 3/24
SB 169

States with Split Punitive Damages Statutes

- Alaska
  - 50% goes to the general fund.
- Georgia
  - 75% goes to the general fund.
- Illinois
  - Leaves the percentage allocation to the discretion of the judge in each case.
- Indiana
  - 75% goes to violent crimes victim fund
- Missouri
  - 50% to general fund
- Oregon
  - 60% to crimes injury compensation fund
    10% to state courts facilities and security account
- Utah
  - 50% goes to the general fund.

Pros

- Prevents large windfalls to individual plaintiffs.
- Recognizes that punitive damage awards are often levied where there is widespread harm to individuals other than the plaintiff and allows the award to be allocated in a manner that reaches more potentially injured people.
- Resolves the disconnect between the societal purposes for which punitive damages are awarded (punishment, deterrence) and the individualized receipt of such awards.
- Decreases the number and size of punitive damage awards, thereby slowing increase to liability insurance premiums and improving availability of insurance.
- Properly directs punitive damages, which are analogous to criminal fines, to the State.
- Produces similar deterrence at lower social cost by reducing the strain on courts caused by frivolous suits.

SB 169

STATE	ENACTED	PUNITIVE DAMAGES SHARING LAWS IN EFFECT	HOW ATTORNEYS' FEES ARE HANDLED
Alaska	1997	Allocates 50% of a punitive damage award to state general fund. Alaska Stat. § 09.17.020(j).[1]	If an attorney contracts for or collects a contingency fee in connection with an action for personal injury, death, or property damage and the damages awarded by a court or jury include an award of punitive damages, the attorney's contingent fee is calculated before the state's portion of the punitive damage award is deducted from the total award of damages. Alaska Stat. § 09.60.080.
Georgia	1987	In product liability cases, allocates 75% of a punitive damage award, less a proportionate part of the costs of litigation, including reasonable attorney's fees, all as determined by the trial judge, to state treasury. Ga. Code Ann. § 51-12-5.1(e)(2).[2]	Attorney's fees and costs are deducted before the state takes its share of the punitive damage award. Ga. Code Ann. § 51-12-5.1(e)(2).
Illinois	1986 Amended in 1997	Trial court has discretion to apportion a punitive damage award among the plaintiff, the plaintiff's attorney, and the Illinois Dep't of Human Services. 735 Ill. Comp. Stat. § 5/2-1207.	The amount of the award paid from the punitive damages to the plaintiff's attorney shall be reasonable and without regard to any contingent fee contract, except that such amount shall not exceed the amount authorized by the contingent fee contract. 735 Ill. Comp. Stat. § 5/2-1207.
Indiana	1995	Allocates 75% of a punitive damage award to treasurer of state, who shall deposit the funds into the violent crime victim's compensation fund. Ind. Code Ann. § 34-51-3-6(c).[3]	The statute limits the amount of the client's recovery. If the parties have a contingent fee contract that operates as a percentage of all amounts recovered by the plaintiff, it may serve to reduce the amount on which the attorney calculates the fee. *Cheatham v. Pohle*, 789 N.E.2d 467, 476 (Ind. 2003).
Iowa	1986	Allocates 75% of a punitive damage award to a civil reparations trust fund administered by the state court administrator unless the jury finds the defendant's conduct was directed specifically at the claimant, or at the person from which the claimant's claim is derived. Funds placed in the civil reparations trust are under the control and supervision of the executive council, and are disbursed only for purposes of indigent civil litigation programs or insurance assistance programs. Iowa Code Ann. § 668A.1(2)(b).[4]	Plaintiff receives 25% share of punitive damage award after payment of all applicable costs and fees. The remainder is allocated to the state. Iowa Code Ann. § 668A.1(2)(b).
Missouri	1987	Allocates 50% of punitive damages to tort victims' compensation fund. Mo. Rev. Stat. § 537.675(3).[5]	Attorney's fees and costs are deducted before state applies its lien. Mo. Rev. Stat. § 537.675(3).

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WITNESS STATEMENT

SB 268 – JUDICIAL COMMITTEE HEARING (5 Min. Comments)

Good Morning.

Madam Chair, and members of the committee, thank you for the opportunity to provide testimony this morning as a Proponent of SB268.

My name is Leslie Everett. I am a resident and ~~property~~ Home owner in Emigrant, in Park County, MT.

I am very grateful for Senator Hertz's work on this bill and strongly urge the committee to pass it. As a property owner, I value my personal property rights including the right to rent out my home occasionally on a short-term basis. Doing so allows my husband and I to the opportunity to keep our home and property. It allows us to supplement our income, re-invest in our home and save for retirement. We both come from very humble backgrounds. Homeownership for us, has been a tool to build financial stability for our family. I suspect that this is true for many homeowners – and it is right that is worth protecting and preserving.

Many ~~STR~~ Short-term hosts particularly in rural Park County are local individual landowners who either rent out their homes or rent out a cabin, or room. There are countless stories of how hosting on a short-term basis helped them keep their homes and property – often through some very difficult circumstances.

Fundamental to property rights is the ability for a homeowner to determine the most appropriate term of tenancy that suits their individual needs. Renting a home, room or cabin for one week vs one-year does not change the effective usage of a residential dwelling. SB268 rightfully establishes that term of tenancy is not a determining factor in the residential use of a property.

SB268 also establishes some very important and necessary parameters for local governments to substantiate and quantify any proposed regulations on Short-term rentals. This is important, as short-term rentals have become a convenient scapegoat for taxation and over-regulation under the guise of housing initiatives with NO actual data to support those measures.

If today's hearing is anything like the hearing in the senate committee – then, you will likely hear this morning from opponents of the bill some of which are paid staff representing entities, like the hotel association, local government and non-profits groups and other special interests. While I respect their right to be heard, I don't appreciate the funding of paid staff that support these special interests to come and advocate against fundamental property rights for Montana residents and homeowners. Their influence has already stripped this bill of more robust notification and public engagement requirements when matters of zoning and regulation are on the table. Think about that. Shouldn't these entities be ENCOURAGING robust engagement with ~~their~~ constituents? Instead of opposing it. for Accountability

You will also likely hear from some special interests that these mom & pop Home rentals are commercial in nature and should be subject to the same standards of large commercial enterprises. Following that same logic – then someone with a cottage food license that makes cookies or bread at home to sell at a Farmer's Market should be subject to the same taxation,

regulations, inspections, and standards as a large chain restaurant or food service operation. It just doesn't make sense.

The Licensing and standards should be fitting to the nature of work. In this case it is simple. For Residential Use of a property as a long-term rental the Montana Code provides for landlord and tenancy law. For residential use of a property as a short-term rental the Montana Code requires licensing as a Tourist HOME and to pay lodging taxes. In both cases these are more than adequate and fitting for the nature of the use.

Please vote in favor of SB268. It is an important bill that protects private property rights and gives homeowners the ability to utilize their home as a tool for building financial stability not only in their personal lives but in communities across Montana.

Thank you.

03/24/23 JUH ONLINE TESTIMONY LIST					
SB	268	Proponent	Stephanie Baucus	Billings, MT	Mountain Homes
SB	268	Proponent	Melissa Miculka	Gardiner, MT	NA
SB	268	Proponent	Susan Miller	Livingston, MT	NA
SB	268	Proponent	JoLynn Sharrow/Hoppe	Gardiner, Montana	NA
SB	268	Proponent	Kim Kaiser	Gardiner, Montana	NA
SB	268	Proponent	Christine and Warren Wagner	Gardiner, Montana	NA
SB	268	Opponent	Alanah	Big Sky, MT	NA
SB	268	Opponent	Greg Lynch	Bozeman, MT	NA
SB	268	Opponent	Derek Goldman	Missoula, MT	NA
SB	268	Opponent	Terry Cunningham	Bozeman, MT	**Bozeman City Commission**
SB	268	Opponent	Jana Richter	Missoula, MT	NA
SB	268	Opponent	Izzy Milch	Missoula, MT	Forward Montana
SB	268	Opponent	William Luis Marchese	Bozeman, MT	NA
SB	268	Opponent	Tia Goebel	Bozeman, MT	Bozeman Tenants United
SB	268	Opponent	Katie Fire Thunder	Bozeman, MT	NA
SB	268	Opponent	Hannah Kosel	Missoula, MT	NA
SB	268	Opponent	Dylan Albans	Missoula, MT	NA
SB	268	Opponent	Rebecca Norton	Whitefish	NA
SB	268	Opponent	Tirza Asbell	Missoula, MT	Montana Women Vote
SB	268	Opponent	Danielle Vazquez	Missoula, MT	NA
SB	268	Informational \	Lorna marchington	Pray mt	NA
SB	216	Proponent	Dan Brooks	Billings, MT	Billings Chamber of Commerce
SB	216	Opponent	Domenic Cossi	Bozeman, MT	NA

SB	216	Opponent	Mark Person	Absarokee MT	NA
SB	216	Opponent	Brett DeBruycker	Dutton MT	NA
SB	216	Opponent	Monte Beck	Bozeman, MT	NA
SB	216	Opponent	jory ruggiero	Bozeman, MT	NA
SB	216	Opponent	Anthony Jackson	Bozeman, MT	NA
SB	216	Opponent	Anders Blewett	Great Falls	NA
SB	180	Proponent	Denise Johnson	Billings, MT	Montana Child Protection Alliance
SB	180	Opponent	Leslie Halligan	Missoula, MT	NA
SB	180	Opponent	Paulina Roberts	Missoula, MT	NA
SB	180	Opponent	Cherie LeBlan-Dyba	Miles City Montana	NA
SB	184	Proponent	Denise Johnson	Billings, MT	Montana Child Protection Alliance
SB	184	Opponent	Heather Webster	Billings, MT	Yellowstone County Attorney's Office
SB	184	Informational	Brian C. Smith	Missoula, MT	Office of the State Public Defender
SB	277	Proponent	Kristi Bice	Billings, MT	Jane Doe No More
HB	479	Informational	Nate Thomas	Helena, MT	Department of Justice

The Big Sky Country

MONTANA HOUSE OF REPRESENTATIVES

VISITOR REGISTER

JUDICIARY COMMITTEE

6

DATE 3/24 BILL NO: SB172

SPONSOR(S): Sen Friedel

SHORT TITLE: _____

Please leave prepared testimony with the clerk.
Witness Statement forms are available if you care to submit written testimony.

PLEASE PRINT PLEASE PRINT PLEASE PRINT PLEASE PRINT

Name	Representing	Support	Oppose	Informt'l
John Looney	MT Bail Assn.		X	
John Jay Willoughby	MT Bail Assn		X	

The Big Sky Country

MONTANA HOUSE OF REPRESENTATIVES

VISITOR REGISTER

JUDICIARY COMMITTEE

7

DATE 3/24 BILL NO: SB169

SPONSOR(S): Sen Hertz

SHORT TITLE: _____

Please leave prepared testimony with the clerk.
Witness Statement forms are available if you care to submit written testimony.

PLEASE PRINT PLEASE PRINT PLEASE PRINT PLEASE PRINT

Name	Representing	Support	Oppose	Informt'l
Al Smith	MTLA		X	
Jim Hunt	MTLA		X	
Ruth Rader	Self	X		

The Big Sky Country

MONTANA HOUSE OF REPRESENTATIVES

VISITOR REGISTER

JUDICIARY COMMITTEE

DATE 3/24 BILL NO: SB268

SPONSOR(S): Sen Hertz

SHORT TITLE: _____

Please leave prepared testimony with the clerk.
Witness Statement forms are available if you care to submit written testimony.

PLEASE PRINT PLEASE PRINT PLEASE PRINT PLEASE PRINT

Name	Representing	Support	Oppose	Informt'l
Bryan Wells	self	✓		
Leslie Fergel	Livingston Chamber	✓		
Leslie Everett	Self	✓		
Eric Copeland	Dept of Labor & Industry			X
DruAnn Robidoux	myself	✓		
Jon [illegible]	A:/bnb		X	
John Robidoux	SELF	✓		
Robin Turner	City of MT		✓	
Sam Sill	MAPC	✓		
ANDY SKINNER	SELF		✓	
Caitlin Piserchia	MT Sierra Club		✓	
Ruth Rater	self	✓		
Ethan Hanley	Associated Students of UM		X	
Jake Brown	Shelter MT		X	
Daniel Carlino	City Council		+	

The Big Sky Country

MONTANA HOUSE OF REPRESENTATIVES

VISITOR REGISTER

JUDICIARY COMMITTEE

DATE 3/24 BILL NO: SB184

SPONSOR(S): Sen Lenz

SHORT TITLE: _____

Please leave prepared testimony with the clerk.
Witness Statement forms are available if you care to submit written testimony.

PLEASE PRINT PLEASE PRINT PLEASE PRINT PLEASE PRINT

Name	Representing	Support	Oppose	Informt'l
Brian Smith	OPD			X
Nikki Grossman	CFSD			X
Ruth Rater	self	X		
Bree Spaar	MJN		X	

The Big Sky Country

MONTANA HOUSE OF REPRESENTATIVES

VISITOR REGISTER

JUDICIARY COMMITTEE

1

DATE 3/24 BILL NO: ~~SB~~ 216

SPONSOR(S): Sen Fitzpatrick

SHORT TITLE: _____

Please leave prepared testimony with the clerk.
Witness Statement forms are available if you care to submit written testimony.

PLEASE PRINT PLEASE PRINT PLEASE PRINT PLEASE PRINT

Name	Representing	Support	Oppose	Informt'l
Charles Robison	MT Chamber	✓		
Lee Mickus	American Tort Reform Asso	✓		
Al Smith	MTLA		X	
Amanda Fricke	MT AFL-CIO		X	
Ronda Kriegel	NFIB	X		
Jim Hunt	MTLA		X	
Adam Haight	Laborers 1686		X	
Al Ekblad	Operators 400		X	

The Big Sky Country

MONTANA HOUSE OF REPRESENTATIVES

VISITOR REGISTER

JUDICIARY COMMITTEE

3

DATE 3/24 BILL NO: SB180

SPONSOR(S): Sen Lenz

SHORT TITLE: _____

Please leave prepared testimony with the clerk.
Witness Statement forms are available if you care to submit written testimony.

PLEASE PRINT PLEASE PRINT PLEASE PRINT PLEASE PRINT

Name	Representing	Support	Oppose	Informt'l
Allison Dunne	Bitterroot CASA		X	
April Barnings	Montana MHH/GAH		X	
Nikki Grossl	CFSD			X
Devonna McCartney	myself, CASA		✓	
Ruth Rater	Self	X		

The Big Sky Country

MONTANA HOUSE OF REPRESENTATIVES

VISITOR REGISTER

JUDICIARY COMMITTEE

S

DATE 3/24 BILL NO: HB479

SPONSOR(S): Rep Read

SHORT TITLE: _____

Please leave prepared testimony with the clerk.
Witness Statement forms are available if you care to submit written testimony.

PLEASE PRINT PLEASE PRINT PLEASE PRINT PLEASE PRINT

Name	Representing	Support	Oppose	Informt'l
Ruth Rafer	Self	✓		
Lexx Pierre	self		✓	
Ethan Friedlander	Self		✓	

The Big Sky Country

MONTANA HOUSE OF REPRESENTATIVES

VISITOR REGISTER

JUDICIARY COMMITTEE

DATE 3/24 BILL NO: SB277

SPONSOR(S): Sen Morigeau

SHORT TITLE: _____

Please leave prepared testimony with the clerk.
Witness Statement forms are available if you care to submit written testimony.

PLEASE PRINT PLEASE PRINT PLEASE PRINT PLEASE PRINT

Name	Representing	Support	Oppose	Informt'l
Robin Turner	Meads v	✓		
Ruth Rater	Self	✓		

NAMIC
NATIONAL ASSOCIATION OF MUTUAL INSURANCE COMPANIES

January 17, 2019

Montana State Legislature
House Judiciary Committee

sent via email

RE: HB 202, Statute of Limitations - NAMIC's written testimony

Dear Representative Doane, Chair; Representative Kelker, Vice-Chair; Representative Usher, Vice-Chair; and honorable members of the House Judiciary Committee:

Thank you for affording the National Association of Mutual Insurance Companies (NAMIC) an opportunity to submit written testimony to your committee for the January 18, 2019, public hearing on this proposed legislation.

The National Association of Mutual Insurance Companies (NAMIC) is the largest property/casualty insurance trade association in the country, with more than 1,400 member companies. NAMIC supports regional and local mutual insurance companies on main streets across America and many of the country's largest national insurers. NAMIC members represent 40 percent of the total property/casualty insurance market, serve more than 170 million policyholders, and write nearly $225 billion in annual premiums. NAMIC has 134 members who write property/casualty in the State of Montana, which represents 40% of the marketplace.

NAMIC and its member companies share Representative Morigeau's desire to protect innocent victims of childhood sexual abuse. We support criminal laws that severely punish evil souls, who prey upon minors and inflict serious harm to the lives of children and their families. Although we support the noble intentions of this legislation, we have to look beyond our hurt and anger about the subject matter of the bill and consider the broad public policy implications of the proposed changes to the civil statute of limitation. Specifically, we are concerned about the erosion of a well-established legal doctrine that is intended to promote a fundamental tenant of due process of law, i.e. that civil claims be asserted in a timely manner so that BOTH parties have ample opportunity to gather evidence, locate witnesses and appropriately develop their legal case.

The legal process needs to be fair and balanced for BOTH parties, even when we as a society absolutely deplore the alleged behavior of one of the parties to the case. The true test of our commitment to fairness in the eyes of the law, is whether we afford procedural fairness to those we most want punished. The proposed change to the statute of limitation to allow a civil claim for sexual assault of a child to be "commenced at any time" is concerning as a matter of juris prudence. NAMIC appreciates the need to protect children and provide them with a reasonable statute of limitations to assert legal claims against alleged sexual predators, but this proposed language, which may be emotionally satisfying, is rife with unacceptable due process implications which are bad for society in the aggregate. Moreover, the proposed statute of limitations would likely create a problem for the judicial system, which could become inundated with legal cases plagued by serious evidentiary problems resulting from the assertion of very old claims where the recollection of witnesses is in question and access to necessary evidence is limited.

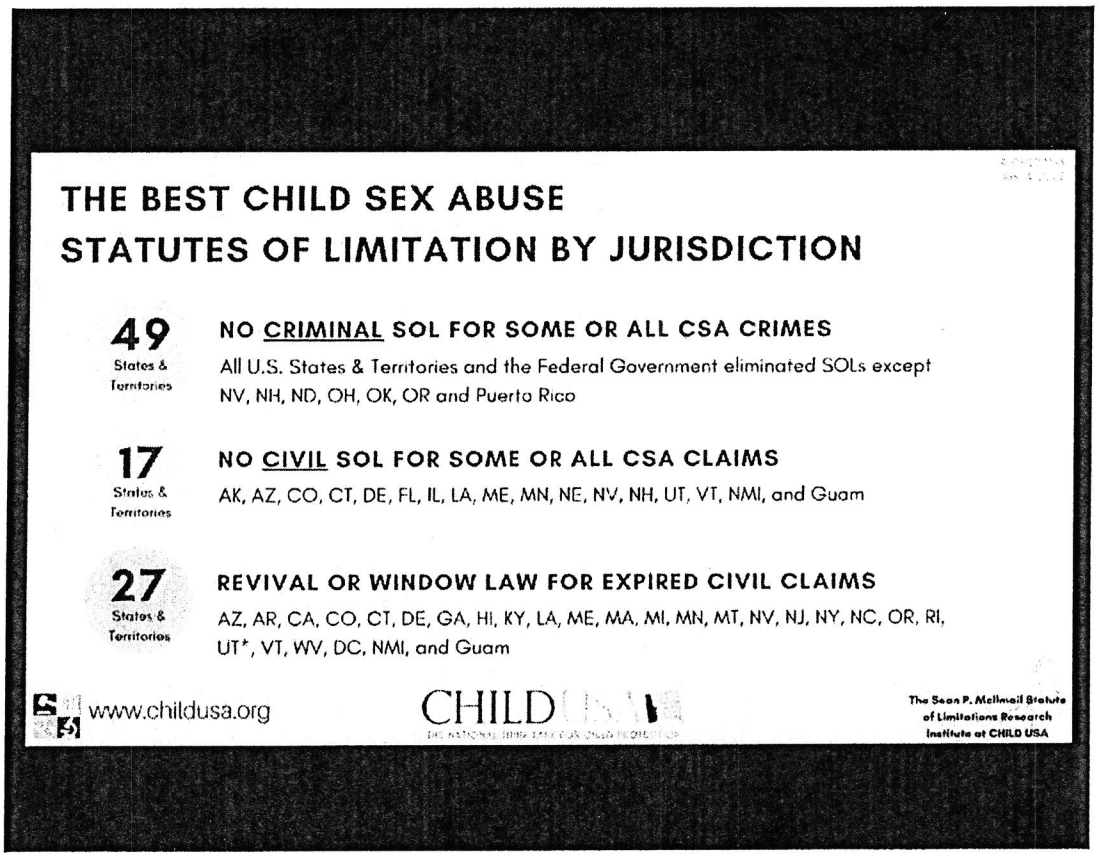
For the aforementioned reasons, we respectfully express opposition to this legislation, as drafted, and ask for your No Vote on HB 202. Thank you for your time and consideration of NAMIC's written testimony. Please feel free to contact me at 303.907.0587 or at crataj@namic.org, if you have any questions pertaining to my written testimony.

Respectfully,

Christian J. Rataj, Esq.
NAMIC - Senior Regional Vice President
State Affairs, Western Region

ADDITIONAL DOCUMENTS

ADDITIONAL DOCUMENTS


THE BEST CHILD SEX ABUSE
STATUTES OF LIMITATION BY JURISDICTION
49
States & Territories
NO CRIMINAL SOL FOR SOME OR ALL CSA CRIMES
All U.S. States & Territories and the Federal Government eliminated SOLs except NV, NH, ND, OH, OK, OR and Puerto Rico
17
States & Territories
NO CIVIL SOL FOR SOME OR ALL CSA CLAIMS
AK, AZ, CO, CT, DE, FL, IL, LA, ME, MN, NE, NV, NH, UT, VT, NMI, and Guam
27
States & Territories
REVIVAL OR WINDOW LAW FOR EXPIRED CIVIL CLAIMS
AZ, AR, CA, CO, CT, DE, GA, HI, KY, LA, ME, MA, MI, MN, MT, NV, NJ, NY, NC, OR, RI, UT*, VT, WV, DC, NMI, and Guam
www.childusa.org
CHILD USA
The Sean P. Mellmail Statute of Limitations Research Institute at CHILD USA

DISTRIBUTION REQUESTED BY:

APPROVED BY SENATOR

ADDITIONAL DOCUMENTS

Airbnb in Montana

Airbnb was born in 2007 when two Hosts welcomed three guests to their San Francisco home, and has since grown to 4 million Hosts who have welcomed more than 1 billion guest arrivals across over 220 countries and regions. Travel on Airbnb helps keep more of the financial benefits of tourism with the people and places that make it happen.

In Montana, Airbnb is an important economic tool for residents who share their homes to earn extra money. Home sharing has allowed Montananas to navigate the economic upheaval of the pandemic and keep up with increasing cost of living. The majority of Hosts– approximately 77 percent– share just one home, and by welcoming guests who spend money at small businesses, restaurants and cafes, Hosts across Montana also help support their local economies.

Airbnb Host community in Montana:

77%
Approximate percentage of Hosts with one entire home listing

$13,400
Median host earnings during the 12 month period ending in 10/1/2022

68%
Approximate percentage of Women Hosts as of 10/1/2022[1]

42%
Hosts say hosting allows them to meet the rising cost of living[2]

25%
Approximate percentage of Hosts over the age of 60[3]

33%
Hosts confirm Airbnb has helped them stay in their home[4]

93%
Hosts confirm Airbnb is not their primary occupation

$168M
Approximate total Host earnings for Montana hosts from 10/1/2021-9/30/2022

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[1] Self reported through survey to Airbnb hosts
[2] Self reported through survey to Airbnb hosts
[3] Self reported through survey to Airbnb hosts
[4] Self reported through survey to Airbnb hosts

Airbnb Democratizes Revenue

Airbnb currently collects and remits taxes in the State of Montana. As a result of tax collection efforts, total Short-Term Rental Lodging Taxes remitted to the State of Montana during fiscal year 2022 add up to almost $26M.

Trust & Safety

The safety and security of our community is a top priority. As a result, Airbnb has invested heavily in tools and resources for our Hosts, their guests and the communities they live and visit, and continues to seek new and innovative ways to lead the industry on issues of trust and safety. The following includes some of the critical measures and resources we provide:

- **Neighborhood Support Line:** This hotline has proven to be an important tool in our efforts to combat unauthorized gatherings and enforce our ban on party houses. **The number is (855) 635-7754.**
- **Law Enforcement Portal:** In 2019, Airbnb established our Law Enforcement Portal, which provides a secure channel for law enforcement to submit valid legal requests for information, track requests and receive updates. To create an account and submit a request, please visit **www.airbnb.com/lert.**
- **Global Ban on Parties:** Our policies ban disruptive parties and unauthorized gatherings in our listings.
- **Risk detection tools**: Innovative safety-focused technologies aimed at helping to reduce the chance of disruptive parties and help Hosts protect against neighborhood disruption – including industry-first proprietary reservation screening technology, as well as heightened interventions during certain times of year, like New Year's Eve, that can attract a higher risk of unauthorized or disruptive parties.
- **Home and booking protection**: AirCover for Hosts provides top-to-bottom protection against rare issues like property damage and covers every booking made on Airbnb, while Aircover for Guests provides comprehensive protection free for all guests and on every reservation made on Airbnb in the unlikely event of an issue with a stay.

418 East 2nd Street · PO Box 158 · Whitefish, MT 59937
(406) 863-2406 · Fax : (406) 863-2419
www.cityofwhitefish.org

ADDITIONAL DOCUMENTS

March 21, 2023

Honorable Members of the House Judiciary Committee
Montana House of Representatives
PO BOX 200400
Helena, MT 59620-0400

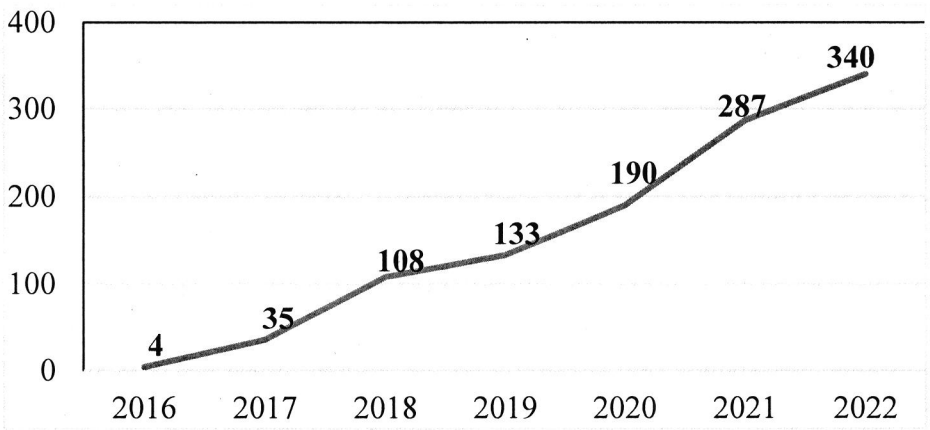
RE: Senate Bill No. 268 (SB 268)

Dear Madam Chair, Senator Hertz, and Members of the Committee:

The City of Whitefish strongly opposes SB 268 scheduled for a hearing on March 24th, which would define short-term rentals as a residential use and allow primary residents to short-term rental all or part of their property and/or a property adjacent to the owner's primary residence.

As depicted in the graph below, Whitefish has continued to see increased registered short-term rentals in approved zoning districts. From 2020 to 2021 the City experienced a 51% increase in short-term rentals. Last year registered short-term rental units increased an additional 18.5% compared to 2021. While these increases are significant, we know that there are up to two-times more that are operating illegally within the City and enforcement efforts are underway.

Registered Short-Term Rentals by Year



As homes and accessory dwelling units are converted to short-term rentals, we lose workforce housing which is desperately needed as prices increase. The average sales price, excluding sales over $5 million, in the 59937 ZIP Code increased from $748,247 in 2019 to $1,142,229 in 2021, a 53% increase over a two-year period.

Sure, SB 268 may be one a way for property owners to support the higher cost of housing, but at what cost? It's well known that short-term rentals: (1) lead to degradation of neighborhoods and loss of community, (2) compete with other lodging businesses clearly making short-term rentals a commercial use, and (3) increase demand for tourism related services for which those businesses are currently struggling to find workers due to the high cost of housing. Besides, property owners already have an opportunity to rent their properties long-term (at least 30 days) to generate additional income. However, even with an additional income stream, many working Montanans cannot afford the down-payments or monthly payments of housing, especially in higher cost areas.

While SB 268 appears to allow some control under covenants and homeowners' associations, the bill is retroactive. Therefore, even if a homeowners' association added the prohibition of short-term rentals prior to the passage of this bill, it would generally only be effective for new owners after the bylaws are adopted. SB 268 also does nothing to protect neighborhoods that do not have covenants in place or a homeowners' association, which includes much of our historic neighborhoods.

As a gateway community to Glacier National Park, Whitefish will undoubtedly see more short-term rentals if SB 268 is passed, which will only increase housing prices and take away needed housing for our local workforce. Accessory dwelling units (ADUs) are a key component of our workforce housing as they are often smaller and lower cost to rent, which is why we have reduced regulations for ADUs in Whitefish. At a minimum ADUs should be eliminated from SB 268 because we do not need more short-term rentals for visitor, we need more housing for Montanans.

We respectfully request that you oppose SB 268. Thank you for considering our comments.

Sincerely,

Dana Smith

Dana Smith, CPA
Whitefish City Manager
dsmith@cityofwhitefish.org

MINUTES

MONTANA HOUSE OF REPRESENTATIVES

68th LEGISLATURE - REGULAR SESSION

COMMITTEE ON (H) JUDICIARY

Call to Order: Chair Amy Regier-R, on April 04, 2023 at 7:01 AM, in 137

ROLL CALL

Members Present:	Rep. Amy Regier, Chair (R) Rep. Laurie Bishop, Vice Chair (D) Rep. Brandon Ler, Vice Chair (R) Rep. Jennifer Carlson (R) Rep. Lee Deming (R) Rep. Neil Duram (R) Rep. Jodee Etchart (R) Rep. Tom France (D) Rep. Donavon Hawk (D) Rep. Caleb Hinkle (R) Rep. Jedediah Hinkle (R) Rep. SJ Howell (D) Rep. Greg Kmetz (R) Rep. Braxton Mitchell (R) Rep. Wayne Rusk (R) Rep. Laura Smith (D) Rep. Zooey Zephyr (D)
Members Excused:	Rep. Kim Abbott (D) Rep. Casey Knudsen (R) Rep. Lola Sheldon-Galloway (R)
Staff Present:	Jamie Van Valkenburg, Secretary Rachel Weiss, Research Analyst

Audio Committees: These minutes are in outline form only. They provide a list of participants and a record of official action taken by the committee. The link to the audio recording of the meeting is available on the Legislative Branch website.

Committee Business Summary:

Hearing & Date Posted:

SB 211 03/31/2023
SB 218 03/31/2023
SB 224 03/31/2023
SB 355 03/31/2023

SB 488 03/31/2023
SB 490 03/31/2023
SB 499 03/31/2023

Executive Action:

SB 11
SB 94
SB 154
SB 216
SB 265
SB 363
SB 400
SB 410

HEARING ON SB 218 - Revise laws pertaining to settlements

Opening Statement:

07:02:53 Sen. Greg Hertz (R), SD 6, opened the hearing on SB 218, Revise laws pertaining to settlements.

Proponent Testimony:

None

Opponent Testimony:

None

Informational Witness Testimony:

None

Questions from Committee:

None

Closing Statement:

07:06:02 Sen. Greg Hertz (R), SD 6, closed the hearing on SB 218.

HEARING ON SB 224 - Require court report on district court case numbers and substitutions

Opening Statement:

07:06:22 Sen. Greg Hertz (R), SD 6, opened the hearing on SB 224, Require court report on district court case numbers and substitutions.

Proponent Testimony:

None

Opponent Testimony:

None

Informational Witness Testimony:

None

Questions from Committee:

07:09:02 Rep. Jennifer Carlson

07:09:30 Sen. Greg Hertz-R

Closing Statement:

07:10:00 Sen. Greg Hertz (R), SD 6, closed the hearing on SB 224.

HEARING ON SB 490 - Generally revising the legislature's investigative powers

Opening Statement:

07:10:13 Sen. Greg Hertz (R), SD 6, opened the hearing on SB 490, Generally revising the legislature's investigative powers.

EXHIBIT(230404JUHa1)

Proponent Testimony:

None

Opponent Testimony:

None

Informational Witness Testimony:

None

Questions from Committee:

07:17:42 Vice Chair Laurie Bishop

07:21:36 Rep. Lola Sheldon-Galloway joined the meeting.

07:22:04 Sen. Greg Hertz-R

Closing Statement:

07:22:32 Sen. Greg Hertz (R), SD 6, closed the hearing on SB 490.

HEARING ON SB 211 - Article V convention commissioner selection and credentialing act

Opening Statement:

07:23:14 Sen. Tom McGillvray (R), SD 23, opened the hearing on SB 211, Article V convention commissioner selection and credentialing act.

Proponent Testimony:

07:33:26 Terry Kramer, Self

07:35:54 Dan McLean, Self

07:37:25 Donna Chippewa, Self

07:38:38 Joe Hoseck, Self

07:41:24 Jacob Emrich, Self

07:42:02 Peggy Bates, Self

Opponent Testimony:

07:44:16 Ed Regan, Broadwater County Republican Central Committee (BCRCC)

07:48:40 Alan Lackey, Self

07:53:14 Connie Ciabatoni, Self

Informational Witness Testimony:

None

Questions from Committee:

07:55:05 Rep. Lola Sheldon-Galloway

08:15:52 Ed Regan, BCRCC

Closing Statement:

08:16:03 Sen. Tom McGillvray (R), SD 23, closed the hearing on SB 211.

EXHIBIT(230404JUHa2)

HEARING ON SB 499 - Revise adverse possesssion laws relating to certain land and improvements

Opening Statement:

08:28:01 Sen. Tom McGillvray (R), SD 23, opened the hearing on SB 499, Revise adverse possesssion laws relating to certain land and improvements.

Proponent Testimony:

None

Opponent Testimony:

08:31:15 Todd O'Hair, Chamber of Commerce

EXHIBIT(230404JUHa3)

08:35:34 Jason Callahan, Green Diamond Resource Company

08:37:31 Julia Altemus, Montana Wood Products Association

Informational Witness Testimony:

None

Questions from Committee:

08:38:57 Rep. Tom France

08:45:56 Sen. Tom McGillvray-R

Closing Statement:

08:46:45 Sen. Tom McGillvray (R), SD 23, closed the hearing on SB 499.

HEARING ON SB 488 - Abolish common law marriage

Opening Statement:

08:48:59 Sen. Daniel Zolnikov (R), SD 45, opened the hearing on SB 488, Abolish common law marriage.

Proponent Testimony:

08:54:06 Brad Belke, Self

Opponent Testimony:

None

Informational Witness Testimony:

08:56:45 Erika Johnston, Department of Public Health and Human Services

Questions from Committee:

08:57:23 Rep. Lola Sheldon-Galloway

09:02:48 Sen. Daniel Zolnikov-R

Closing Statement:

09:03:23 Sen. Daniel Zolnikov (R), SD 45, closed the hearing on SB 488.

HEARING ON SB 355 - Require disqualification of certain judges receiving political contributions

Opening Statement:

09:05:17 Sen. Brad Molnar (R), SD 28, opened the hearing on SB 355, Require disqualification of certain judges receiving political contributions.

Proponent Testimony:

None

Opponent Testimony:

09:11:57 Bruce Spencer, Montana Judges Association

EXHIBIT(230404JUHa4)

09:17:46 Shawn Slanger, State Bar of Montana

09:19:05 Al Smith, Montana Trial Lawyers

Informational Witness Testimony:

None

Questions from Committee:

09:25:45 Rep. Neil Duram

09:28:09 Sen. Brad Molnar-R

Closing Statement:

09:29:54 Sen. Brad Molnar (R), SD 28, closed the hearing on SB 355.

09:34:17 **Recessed**

10:34:51 **Reconvened**

EXECUTIVE ACTION ON SB 11 - Generally revise criminal justice system laws

10:34:59 **Motion:** Vice Chair Brandon Ler moved that **SB 11 BE CONCURRED IN.**

10:35:25 **Motion:** Vice Chair Brandon Ler moved that **SB 11 BE AMENDED.**

Discussion:

10:35:41 Rachel Weiss

Vote: Motion carried unanimously by voice vote.

10:37:55 **Motion:** Vice Chair Brandon Ler moved that **SB 11 BE CONCURRED IN AS AMENDED.**

Vote: Motion carried unanimously by voice vote.

Carrier Assigned: Rep. Laurie Bishop

EXECUTIVE ACTION ON SB 94 - Generally revise laws related to recovery residences

10:38:41 **Motion:** Vice Chair Brandon Ler moved that **SB 94 BE CONCURRED IN.**

Discussion:

10:38:46 Rachel Weiss

10:39:02 **Motion:** Vice Chair Brandon Ler moved that **SB 94 BE AMENDED.**

Discussion:

10:39:26 Rachel Weiss

10:45:55 Rep. Jedediah Hinkle

10:45:58 Rep. Lola Sheldon-Galloway

10:46:08 Rachel Weiss

10:46:36 Rep. Jennifer Carlson

10:47:45 Rep. Lola Sheldon-Galloway

10:48:45 Rep. Casey Knudsen

Vote: Motion carried 17 - 2 by roll call vote with Rep. Duram, Rep. Hinkle, voting no.

10:50:24 **Motion:** Vice Chair Brandon Ler moved that **SB 94 BE AMENDED.**

Discussion:

10:50:38 Rachel Weiss

10:51:42 Rep. Jedediah Hinkle

10:54:07 Rep. Jennifer Carlson

Vote: Motion failed 12 - 7 by roll call vote with Rep. Deming, Rep. Duram, Rep. Hinkle, Rep. Hinkle, Rep. Kmetz, Rep. Mitchell, Rep. Sheldon-Galloway, voting yes.
Rep. Mitchell, By Proxy

10:56:34 **Motion:** Vice Chair Brandon Ler moved that **SB 94 BE CONCURRED IN AS AMENDED.**

Discussion:

10:56:44 Rep. Greg Kmetz

11:00:01 Rep. SJ Howell

11:01:31 Rep. Neil Duram

11:02:50 Rep. Jedediah Hinkle

Vote: Motion carried 12 - 7 by roll call vote with Rep. Deming, Rep. Duram, Rep. Hinkle, Rep. Hinkle, Rep. Kmetz, Rep. Knudsen, Rep. Sheldon-Galloway, voting no.

Carrier Assigned: Rep. Tom France

EXECUTIVE ACTION ON SB 154 - Define the right to privacy to clarify no right to abortion

11:05:22 **Motion:** Vice Chair Brandon Ler moved that **SB 154 BE CONCURRED IN.**

Vote: Motion carried 12 - 7 by roll call vote with Rep. Bishop, Rep. France, Rep. Hawk, Rep. Howell, Rep. Knudsen, Rep. Smith, Rep. Zephyr, voting no.

Carrier Assigned: Rep. Lola Sheldon-Galloway

EXECUTIVE ACTION ON SB 216 - Revise laws related to litigation and products

11:06:55 **Motion:** Vice Chair Brandon Ler moved that **SB 216 BE CONCURRED IN.**

11:07:09 **Motion:** Vice Chair Brandon Ler moved that **SB 216 BE AMENDED.**

Discussion:

11:07:17 Rachel Weiss

11:08:40 Rep. Laura Smith

11:08:46 Rachel Weiss

Vote: Motion carried 13 - 6 by roll call vote with Rep. Bishop, Rep. France, Rep. Hawk, Rep. Howell, Rep. Smith, Rep. Zephyr, voting no.

11:10:05 **Motion:** Vice Chair Brandon Ler moved that **SB 216 BE CONCURRED IN AS AMENDED.**

Discussion:

11:10:17 Rep. Tom France

11:13:21 Rep. Braxton Mitchell joined the meeting.

11:14:40 Rep. Laura Smith

Vote: Motion carried 11 - 8 by roll call vote with Rep. Bishop, Rep. Carlson, Rep. Deming, Rep. France, Rep. Hawk, Rep. Howell, Rep. Smith, Rep. Zephyr, voting no.

Carrier Assigned: Rep. Casey Knudsen

EXECUTIVE ACTION ON SB 265 - Increase penalty for conviction of criminal activity of human trafficking

11:16:39 **Motion:** Vice Chair Brandon Ler moved that **SB 265 BE CONCURRED IN.**

11:16:43 **Motion:** Vice Chair Brandon Ler moved that **SB 265 BE AMENDED.**

Vote: Motion carried 13 - 6 by roll call vote with Rep. Bishop, Rep. France, Rep. Hawk, Rep. Howell, Rep. Smith, Rep. Zephyr, voting no.

11:19:17 **Motion:** Vice Chair Brandon Ler moved that **SB 265 BE CONCURRED IN AS AMENDED.**

Discussion:

11:20:08 Vice Chair Laurie Bishop

Vote: Motion carried 13 - 6 by roll call vote with Rep. Bishop, Rep. France, Rep. Howell, Rep. Knudsen, Rep. Smith, Rep. Zephyr, voting no.

Carrier Assigned: Rep. Braxton Mitchell

EXECUTIVE ACTION ON SB 363 - Revising laws related to correctional officers

11:21:35 **Motion:** Vice Chair Brandon Ler moved that **SB 363 BE CONCURRED IN.**

Vote: Motion carried 17 - 2 by roll call vote with Rep. Howell, Rep. Zephyr, voting no.

Carrier Assigned: Rep. Neil Duram

EXECUTIVE ACTION ON SB 400 - Extending permit for concealed carry from 4 to 5 years

11:23:04 **Motion:** Vice Chair Brandon Ler moved that **SB 400 BE CONCURRED IN.**

Vote: Motion carried 17 - 2 by roll call vote with Rep. Bishop, Rep. Howell, voting no.

Carrier Assigned: Rep. Braxton Mitchell

EXECUTIVE ACTION ON SB 410 - Removing duty of court administrator

11:24:28 **Motion:** Vice Chair Brandon Ler moved that **SB 410 BE CONCURRED IN.**

Discussion:

11:24:47 Vice Chair Laurie Bishop

Vote: Motion carried 13 - 6 by roll call vote with Rep. Bishop, Rep. France, Rep. Hawk, Rep. Howell, Rep. Smith, Rep. Zephyr, voting no.

Carrier Assigned: Rep. Amy Regier

Committee Discussion:

11:28:23 Rep. Jennifer Carlson

11:28:30 Vice Chair Laurie Bishop

11:28:45 Rep. Donavon Hawk

11:29:06 Chair Amy Regier

11:29:16 Rep. Jedediah Hinkle

11:29:28 Chair Amy Regier

ADJOURNMENT

Adjournment: 11:29:33

Jamie Van Valkenburg, Secretary

Additional Documents:EXHIBIT(230404JUHaad)

Montana State Legislature

2023 Session

Additional House Documents

- Business Report
- Roll Call -Attendance
- Standing Committee Reports
- Tabled Bills
- Fiscal Reports [if any]
- Roll Call Votes
- Proxies signed in ink
- Visitor's sign-in sheet.
- Informational Item's
- Witness Statements if any,
- Zoom/Internet Testimony Information & index
- Any other type of documents such as:
  @ Petitions, {if any} Emails, all documents given to Committee Secretary before & after meeting.
- Public Testimony documents may or may not be scanned, they will be on file at the Montana Historical Society.
- Disclaimer: within the online minutes document you will see vacate spaces within the document. The LAWS II system creates these blank areas they are not loss of information.

The original exhibit/items are on file at the Montana Historical Society and may be viewed there.

Montana Historical Society Archives,
225 N. Roberts, Helena, MT 59620-1201
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BUSINESS REPORT

MONTANA HOUSE

REGULAR

(H) Judiciary

Date: 04/04/2023 **Time:** 7:00 AM

Place: Capitol **Room:** 137

BILLS and RESOLUTIONS HEARD:

SB 211 Article V convention commissioner selection and credentialing act - Sen. Tom McGillvray

SB 218 Revise laws pertaining to settlements - Sen. Greg Hertz

SB 224 Require court report on district court case numbers and substitutions - Sen. Greg Hertz

SB 355 Require disqualification of certain judges receiving political contributions - Sen. Brad Molnar

SB 488 Abolish common law marriage - Sen. Daniel Zolnikov

SB 490 Generally revising the legislature's investigative powers - Sen. Greg Hertz

SB 499 Revise adverse possesssion laws relating to certain land and improvements - Sen. Tom McGillvray

EXECUTIVE ACTION TAKEN:

SB 11:

SB 11 Be Concurred In as Amended

SB 154:

SB 154 Be Concurred In

SB 216:

SB 216 Be Concurred In as Amended

SB 265:

SB 265 Be Concurred In as Amended

SB 363:

SB 363 Be Concurred In

SB 400:

SB 400 Be Concurred In

SB 410:

SB 410 Be Concurred In

SB 94:

SB 94 Be Concurred In as Amended

Comments:

Rep. Amy Regier-R, Chair

House

Roll Call

(H) Judiciary

DATE: 04/04/2023
TIME: 7:00 AM

NAME	PRESENT	ABSENT/EXCUSED
Ler, Brandon	X	
Bishop, Laurie	X	
Mitchell, Braxton	X	
Sheldon-Galloway, Lola		X
Smith, Laura	X	
Deming, Lee	X	
Knudsen, Casey		X
France, Tom	X	
Carlson, Jennifer	X	
Howell, SJ	X	
Hinkle, Caleb	X	
Duram, Neil	X	
Hawk, Donavon	X	
Zephyr, Zooey	X	
Kmetz, Greg	X	
Etchart, Jodee	X	
Hinkle, Jedediah	X	
Rusk, Wayne	X	
Abbott, Kim		X
Regier, Amy	X	

House Standing Committee Report

April 04, 2023

To the Speaker,

We, your committee on **(H) Judiciary** recommend that **Senate Bill 94** (first reading copy – white) **Be Concurred In as Amended**. The referenced amendment is SB0094.004.003.

Carrier: Rep. France

Signed: Amy Regier

Rep. Amy Regier-R, Chair

-End-

Committee Vote:

Yes 12, No 7

House Standing Committee Report

April 04, 2023

To the Speaker,

We, your committee on **(H) Judiciary** recommend that **Senate Bill 11** (first reading copy – white) **Be Concurred In as Amended**. The referenced amendment is SB0011.002.001.

Carrier: Rep. Bishop

Signed: Amy Regier

Rep. Amy Regier-R, Chair

-End-

Committee Vote:

Yes 19, No 0

SB 4/4

House Standing Committee Report

April 04, 2023

To the Speaker,

We, your committee on **(H) Judiciary** recommend that **Senate Bill 216** (first reading copy – white) **Be Concurred In as Amended**. The referenced amendment is SB0216.001.001.

Carrier: Rep. Knudsen

Signed: Amy Regier

Rep. Amy Regier-R, Chair

-End-

Committee Vote:

Yes 11, No 8

4/4

House Standing Committee Report

April 04, 2023

To the Speaker,

We, your committee on **(H) Judiciary** recommend that **Senate Bill 265** (first reading copy – white) **Be Concurred In as Amended**. The referenced amendment is SB0265.002.001.

Carrier: Rep. Mitchell

Signed: Amy Regier

Rep. Amy Regier-R, Chair

-End-

Committee Vote:

Yes 13, No 6

4/4

House Standing Committee Report

April 04, 2023

To the Speaker,

We, your committee on **(H) Judiciary** recommend that **Senate Bill 154** (first reading copy – white) **Be Concurred In**.

Carrier: Rep. Sheldon-Galloway

Signed: Amy Regier

Rep. Amy Regier-R, Chair

-End-

Committee Vote:

Yes 12, No 7

SB 414

House Standing Committee Report

April 04, 2023

To the Speaker,

We, your committee on **(H) Judiciary** recommend that **Senate Bill 363** (first reading copy – white) **Be Concurred In**.

Carrier: Rep. Duram

Signed: Amy Regier

Rep. Amy Regier-R, Chair

-End-

Committee Vote:

Yes 17, No 2

SB 414

House Standing Committee Report

April 04, 2023

To the Speaker,

We, your committee on **(H) Judiciary** recommend that **Senate Bill 400** (first reading copy – white) **Be Concurred In**.

Carrier: Rep. Mitchell

Signed: Amy Regier

Rep. Amy Regier-R, Chair

-End-

Committee Vote:

Yes 17, No 2

4/4

House Standing Committee Report

April 04, 2023

To the Speaker,

We, your committee on **(H) Judiciary** recommend that **Senate Bill 410** (first reading copy – white) **Be Concurred In**.

Carrier: Rep. Regier

Signed: Amy Regier

Rep. Amy Regier-R, Chair

-End-

Committee Vote:

Yes 13, No 6

4/4

HOUSE COMMITTEE ON (H) JUDICIARY
April 04, 2023
VOTE TABULATION - SB 11

Rep. Ler made a Motion that SB0011.002.001 Be Amended
YEAS – 19 NAYS - 0

Y	Ler, Brandon
Y	Bishop, Laurie
Y	Mitchell, Braxton; by proxy
Y	Sheldon-Galloway, Lola
Y	Smith, Laura
Y	Deming, Lee
Y	Knudsen, Casey
Y	France, Tom
Y	Carlson, Jennifer
Y	Howell, SJ
Y	Hinkle, Caleb
Y	Duram, Neil
Y	Hawk, Donavon
Y	Zephyr, Zooey
Y	Kmetz, Greg
Y	Etchart, Jodee
Y	Hinkle, Jedediah
Y	Rusk, Wayne
	Abbott, Kim; by proxy
Y	Regier, Amy

HOUSE COMMITTEE ON (H) JUDICIARY
April 04, 2023
VOTE TABULATION - SB 11

Rep. Ler made a Motion that SB 11 Be Concurred In as Amended
YEAS – 19 NAYS - 0

Y	Ler, Brandon
Y	Bishop, Laurie
Y	Mitchell, Braxton; by proxy
Y	Sheldon-Galloway, Lola
Y	Smith, Laura
Y	Deming, Lee
Y	Knudsen, Casey
Y	France, Tom
Y	Carlson, Jennifer
Y	Howell, SJ
Y	Hinkle, Caleb
Y	Duram, Neil
Y	Hawk, Donavon
Y	Zephyr, Zooey
Y	Kmetz, Greg
Y	Etchart, Jodee
Y	Hinkle, Jedediah
Y	Rusk, Wayne
	Abbott, Kim; by proxy
Y	Regier, Amy

HOUSE COMMITTEE ON (H) JUDICIARY
April 04, 2023
VOTE TABULATION - SB 94

Rep. Ler made a Motion that SB0094.004.003 Be Amended
YEAS – 17 NAYS - 2

Y	Ler, Brandon
Y	Bishop, Laurie
Y	Mitchell, Braxton; by proxy
Y	Sheldon-Galloway, Lola
Y	Smith, Laura
Y	Deming, Lee
Y	Knudsen, Casey
Y	France, Tom
Y	Carlson, Jennifer
Y	Howell, SJ
Y	Hinkle, Caleb
N	Duram, Neil
Y	Hawk, Donavon
Y	Zephyr, Zooey
Y	Kmetz, Greg
Y	Etchart, Jodee
N	Hinkle, Jedediah
Y	Rusk, Wayne
	Abbott, Kim; by proxy
Y	Regier, Amy

HOUSE COMMITTEE ON (H) JUDICIARY
April 04, 2023
VOTE TABULATION - SB 94

Rep. Ler made a Motion that SB0094.004.004 Be Amended
YEAS – 7 NAYS - 12

N	Ler, Brandon
N	Bishop, Laurie
Y	Mitchell, Braxton; by proxy
Y	Sheldon-Galloway, Lola
N	Smith, Laura
Y	Deming, Lee
N	Knudsen, Casey
N	France, Tom
N	Carlson, Jennifer
N	Howell, SJ
Y	Hinkle, Caleb
Y	Duram, Neil
N	Hawk, Donavon
N	Zephyr, Zooey
Y	Kmetz, Greg
N	Etchart, Jodee
Y	Hinkle, Jedediah
N	Rusk, Wayne
	Abbott, Kim; by proxy
N	Regier, Amy

HOUSE COMMITTEE ON (H) JUDICIARY
April 04, 2023
VOTE TABULATION - SB 94

Rep. Ler made a Motion that SB 94 Be Concurred In as Amended
YEAS – 12 NAYS - 7

Y	Ler, Brandon
Y	Bishop, Laurie
Y	Mitchell, Braxton; by proxy
N	Sheldon-Galloway, Lola
Y	Smith, Laura
N	Deming, Lee
N	Knudsen, Casey
Y	France, Tom
Y	Carlson, Jennifer
Y	Howell, SJ
N	Hinkle, Caleb
N	Duram, Neil
Y	Hawk, Donavon
Y	Zephyr, Zooey
N	Kmetz, Greg
Y	Etchart, Jodee
N	Hinkle, Jedediah
Y	Rusk, Wayne
	Abbott, Kim; by proxy
Y	Regier, Amy

HOUSE COMMITTEE ON (H) JUDICIARY
April 04, 2023
VOTE TABULATION - SB 154

Rep. Ler made a Motion that SB 154 Be Concurred In
YEAS – 12 NAYS - 7

Y	Ler, Brandon
N	Bishop, Laurie
Y	Mitchell, Braxton; by proxy
Y	Sheldon-Galloway, Lola
N	Smith, Laura
Y	Deming, Lee
N	Knudsen, Casey
N	France, Tom
Y	Carlson, Jennifer
N	Howell, SJ
Y	Hinkle, Caleb
Y	Duram, Neil
N	Hawk, Donavon
N	Zephyr, Zooey
Y	Kmetz, Greg
Y	Etchart, Jodee
Y	Hinkle, Jedediah
Y	Rusk, Wayne
	Abbott, Kim; by proxy
Y	Regier, Amy

HOUSE COMMITTEE ON (H) JUDICIARY
April 04, 2023
VOTE TABULATION - SB 216

Rep. Ler made a Motion that SB0216.001.001 Be Amended
YEAS – 13 NAYS - 6

Y	Ler, Brandon
N	Bishop, Laurie
Y	Mitchell, Braxton; by proxy
Y	Sheldon-Galloway, Lola
N	Smith, Laura
Y	Deming, Lee
Y	Knudsen, Casey
N	France, Tom
Y	Carlson, Jennifer
N	Howell, SJ
Y	Hinkle, Caleb
Y	Duram, Neil
N	Hawk, Donavon
N	Zephyr, Zooey
Y	Kmetz, Greg
Y	Etchart, Jodee
Y	Hinkle, Jedediah
Y	Rusk, Wayne
	Abbott, Kim; by proxy
Y	Regier, Amy

HOUSE COMMITTEE ON (H) JUDICIARY
April 04, 2023
VOTE TABULATION - SB 216

Rep. Ler made a Motion that SB 216 Be Concurred In as Amended
YEAS – 11 NAYS - 8

Y	Ler, Brandon
N	Bishop, Laurie
Y	Mitchell, Braxton
Y	Sheldon-Galloway, Lola
N	Smith, Laura
N	Deming, Lee
Y	Knudsen, Casey
N	France, Tom
N	Carlson, Jennifer
N	Howell, SJ
Y	Hinkle, Caleb
Y	Duram, Neil
N	Hawk, Donavon
N	Zephyr, Zooey
Y	Kmetz, Greg
Y	Etchart, Jodee
Y	Hinkle, Jedediah
Y	Rusk, Wayne
	Abbott, Kim; by proxy
Y	Regier, Amy

HOUSE COMMITTEE ON (H) JUDICIARY
April 04, 2023
VOTE TABULATION - SB 265

Rep. Ler made a Motion that SB0265.002.001 Be Amended
YEAS – 13 NAYS - 6

Y	Ler, Brandon
N	Bishop, Laurie
Y	Mitchell, Braxton
Y	Sheldon-Galloway, Lola
N	Smith, Laura
Y	Deming, Lee
Y	Knudsen, Casey
N	France, Tom
Y	Carlson, Jennifer
N	Howell, SJ
Y	Hinkle, Caleb
Y	Duram, Neil
N	Hawk, Donavon
N	Zephyr, Zooey
Y	Kmetz, Greg
Y	Etchart, Jodee
Y	Hinkle, Jedediah
Y	Rusk, Wayne
	Abbott, Kim; by proxy
Y	Regier, Amy

HOUSE COMMITTEE ON (H) JUDICIARY
April 04, 2023
VOTE TABULATION - SB 265

Rep. Ler made a Motion that SB 265 Be Concurred In as Amended
YEAS – 13 NAYS - 6

Y	Ler, Brandon
N	Bishop, Laurie
Y	Mitchell, Braxton
Y	Sheldon-Galloway, Lola
N	Smith, Laura
Y	Deming, Lee
N	Knudsen, Casey
N	France, Tom
Y	Carlson, Jennifer
N	Howell, SJ
Y	Hinkle, Caleb
Y	Duram, Neil
Y	Hawk, Donavon
N	Zephyr, Zooey
Y	Kmetz, Greg
Y	Etchart, Jodee
Y	Hinkle, Jedediah
Y	Rusk, Wayne
	Abbott, Kim; by proxy
Y	Regier, Amy

HOUSE COMMITTEE ON (H) JUDICIARY
April 04, 2023
VOTE TABULATION - SB 363

Rep. Ler made a Motion that SB 363 Be Concurred In
YEAS – 17 NAYS - 2

Y	Ler, Brandon
Y	Bishop, Laurie
Y	Mitchell, Braxton
Y	Sheldon-Galloway, Lola
Y	Smith, Laura
Y	Deming, Lee
Y	Knudsen, Casey
Y	France, Tom
Y	Carlson, Jennifer
N	Howell, SJ
Y	Hinkle, Caleb
Y	Duram, Neil
Y	Hawk, Donavon
N	Zephyr, Zooey
Y	Kmetz, Greg
Y	Etchart, Jodee
Y	Hinkle, Jedediah
Y	Rusk, Wayne
	Abbott, Kim; by proxy
Y	Regier, Amy

HOUSE COMMITTEE ON (H) JUDICIARY
April 04, 2023
VOTE TABULATION - SB 400

Rep. Ler made a Motion that SB 400 Be Concurred In
YEAS – 17 NAYS - 2

Y	Ler, Brandon
N	Bishop, Laurie
Y	Mitchell, Braxton
Y	Sheldon-Galloway, Lola
Y	Smith, Laura
Y	Deming, Lee
Y	Knudsen, Casey
Y	France, Tom
Y	Carlson, Jennifer
N	Howell, SJ
Y	Hinkle, Caleb
Y	Duram, Neil
Y	Hawk, Donavon
Y	Zephyr, Zooey
Y	Kmetz, Greg
Y	Etchart, Jodee
Y	Hinkle, Jedediah
Y	Rusk, Wayne
	Abbott, Kim; by proxy
Y	Regier, Amy

HOUSE COMMITTEE ON (H) JUDICIARY
April 04, 2023
VOTE TABULATION - SB 410

Rep. Ler made a Motion that SB 410 Be Concurred In
YEAS – 13 NAYS - 6

Y	Ler, Brandon
N	Bishop, Laurie
Y	Mitchell, Braxton
Y	Sheldon-Galloway, Lola
N	Smith, Laura
Y	Deming, Lee
Y	Knudsen, Casey
N	France, Tom
Y	Carlson, Jennifer
N	Howell, SJ
Y	Hinkle, Caleb
Y	Duram, Neil
N	Hawk, Donavon
N	Zephyr, Zooey
Y	Kmetz, Greg
Y	Etchart, Jodee
Y	Hinkle, Jedediah
Y	Rusk, Wayne
	Abbott, Kim; by proxy
Y	Regier, Amy

The Big Sky Country

MONTANA HOUSE OF REPRESENTATIVES

AUTHORIZED COMMITTEE PROXY 67TH LEGISLATIVE SESSION

I request to be excused from the Judiciary Committee.

I desire to leave my proxy vote with Rep. Bishop.

PLEASE USE PEN

BILL	MOTION (Include AMENDMENT #)	AYE	NO
SB94	Bill	X	

BILL	MOTION (Include AMENDMENT #)	AYE	NO

I authorize my vote to be matched with that of Rep. _____ for any amendments proposed on this date.

Rep. _____ Hawk 4.4.23

(Signature) (Print Name) (Meeting Date)

BM

The Big Sky Country

MONTANA HOUSE OF REPRESENTATIVES

AUTHORIZED COMMITTEE PROXY 68TH LEGISLATIVE SESSION

I request to be excused from the Jud Committee.

I desire to leave my proxy vote with Rep. Ler.

PLEASE USE PEN

BILL	MOTION (Include AMENDMENT #)	AYE	NO
SB11	Am 2.1	X	
SB11		X	
SB94	4.3	X	
SB94	4.4	X	
SB94		X	
SB154		X	
SB216	1.1	X	
[redacted]		[redacted]	
[redacted]			

BILL	MOTION (Include AMENDMENT #)	AYE	NO

I authorize my vote to be matched with that of Rep. Ler for any amendments proposed on this date.

Rep. Baxter Mitchell Baxter Mitchell 3-4-2023

(Signature) (Print Name) (Meeting Date)

04/04/23 JUH ONLINE TESTIMONY LIST					
SB	211	Proponent	Jacob Emrich	Great Falls, MT	N/A
SB	211	Proponent	Peggy BATES	Thompson Falls, Mt	N/A
SB	211	Opponent	Connie Ciabatoni	Bigfork, MT	N/A
SB	211	Opponent	Ed Regan	Townsend, MT	Broadwater County Republican Central Committee
SB	443	Proponent	Steve Ette	Belgrade, MT	Gallatin County Court Services
SB	443	Proponent	Shellie Brady	Bozeman, MT	Gallatin County Court Services
SB	443	Proponent	Vanessa Williamson	Troy, MT	N/A
SB	499	Opponent	Jason Callahan	Shelton, WA	Green Diamond Resource Company
SB	499	Opponent	Julia Altemus	Missoula, MT	Montana Wood Products Association

The Big Sky Country

MONTANA HOUSE OF REPRESENTATIVES

VISITOR REGISTER

JUDICIARY COMMITTEE

DATE 4/4 BILL NO: SB218

SPONSOR(S): Sen Hertz

SHORT TITLE: _____

Please leave prepared testimony with the clerk.
Witness Statement forms are available if you care to submit written testimony.

PLEASE PRINT PLEASE PRINT PLEASE PRINT PLEASE PRINT

Name	Representing	Support	Oppose	Informt'l

No Visitors Registered into this Committee Meeting

The Big Sky Country

MONTANA HOUSE OF REPRESENTATIVES

VISITOR REGISTER

JUDICIARY COMMITTEE

2

DATE 4/4 BILL NO: SB224

SPONSOR(S): Sen Hertz

SHORT TITLE: _____

Please leave prepared testimony with the clerk.
Witness Statement forms are available if you care to submit written testimony.

PLEASE PRINT PLEASE PRINT PLEASE PRINT PLEASE PRINT

Name	Representing	Support	Oppose	Informt'l

No Visitors Registered into this Committee Meeting

The Big Sky Country

MONTANA HOUSE OF REPRESENTATIVES

VISITOR REGISTER

JUDICIARY COMMITTEE

3

DATE 4/4 BILL NO: SB490

SPONSOR(S): Sen Hertz

SHORT TITLE: _____

Please leave prepared testimony with the clerk.
Witness Statement forms are available if you care to submit written testimony.

PLEASE PRINT PLEASE PRINT PLEASE PRINT PLEASE PRINT

Name	Representing	Support	Oppose	Informt'l

No Visitors Registered into this Committee Meeting

The Big Sky Country

MONTANA HOUSE OF REPRESENTATIVES

VISITOR REGISTER

JUDICIARY COMMITTEE

4

DATE 2/4 BILL NO: SB211

SPONSOR(S): Sen McGillvray

SHORT TITLE: _____

Please leave prepared testimony with the clerk.
Witness Statement forms are available if you care to submit written testimony.

PLEASE PRINT PLEASE PRINT PLEASE PRINT PLEASE PRINT

Name	Representing	Support	Oppose	Informt'l
Alan Lackey	Self		X	
CHRIS MARTIN	Self		X	
ED REGAN	Broadwater Rep Central committee		X	
DAN MACLEAN	SELF	X		
JOE HOSSETT	SELF	X		
TERRY KRAMER	SELF	X		
Donna Chippewa	self	X		
MICHAEL LEAMON	SELF	X		

The Big Sky Country

MONTANA HOUSE OF REPRESENTATIVES

VISITOR REGISTER

JUDICIARY COMMITTEE

5

DATE 4/4 BILL NO: SB499

SPONSOR(S): Sen McGillvray

SHORT TITLE: _____

Please leave prepared testimony with the clerk.
Witness Statement forms are available if you care to submit written testimony.

PLEASE PRINT PLEASE PRINT PLEASE PRINT PLEASE PRINT

Name	Representing	Support	Oppose	Informt'l
Todd O'Hair	MT Chamber		✓	

The Big Sky Country

MONTANA HOUSE OF REPRESENTATIVES

6

VISITOR REGISTER

JUDICIARY COMMITTEE

DATE 4/4 BILL NO: SB488

SPONSOR(S): Sen Zolnikov

SHORT TITLE: _____

Please leave prepared testimony with the clerk.
Witness Statement forms are available if you care to submit written testimony.

PLEASE PRINT PLEASE PRINT PLEASE PRINT PLEASE PRINT

Name	Representing	Support	Oppose	Informt'l
BRAD BELKE	Self	X		
Erica Johnston	DPHHS			✓
Jacqueline Denmark Esq.	self	X		

The Big Sky Country

MONTANA HOUSE OF REPRESENTATIVES

7

VISITOR REGISTER

JUDICIARY COMMITTEE

DATE 4/4 BILL NO: SB 355

SPONSOR(S): Sen Molnar

SHORT TITLE: _____

Please leave prepared testimony with the clerk.
Witness Statement forms are available if you care to submit written testimony.

PLEASE PRINT PLEASE PRINT PLEASE PRINT PLEASE PRINT

Name	Representing	Support	Oppose	Informt'l
Al Smith	MTLA		X	
Bruce Spencer	MJA		X	
Sean Slanger	Montana Bar Assoc			

ADDITIONAL DOCUMENTS
Brad Belke <b.l.belke@gmail.com>

Gmail

Re: Senate Bill 488 -- Invalidation of Future Common Law Marriages

1 message

Jill Gannon-Nagle <jill@jgnlawoffice.com> Thu, Mar 23, 2023 at 10:27 AM
To: Brad Belke <b.l.belke@gmail.com>

Hi Brad,

I also support SB 488 for the reasons you have provided.

I have seen 3 common law cases in the last 3 years, and all became extremely costly and detrimental.

Case #1 – Probate matter in which the Father of 2 children had been cohabitating with a friend for several years. Father passed away and the friend of course claimed common law marriage. The Court granted the common law marriage and the children were left with essentially no inheritance, which was never the intention of their Father.

Case #2 - A boyfriend/girlfriend who resided together in their 40's. The boyfriend had a lucrative job and the girlfriend did not. Naturally when the relationship ended, the girlfriend filed for dissolution and thus ensued a lengthy dissolution process. The boyfriend ended up paying the girlfriend as significant amount to end the relationship.

Case #3 – A husband and wife who did marry about 4 years prior to divorce. They had dated for about 10 years before marriage. Wife filed for petition for dissolution alleging the actual marriage date. Once the husband's assets became more obvious, wife amended the petition to include the prior 10 years.

I hope this helps in your efforts.

Thank you,

Jill Gannon-Nagle

Law Office of Jill Gannon-Nagle, LLC

PO Box 283

Dillon, MT 59725

406.683.9250

www.jgnlawoffice.com

Patrick A. Quinn
Attorney at Law

1430 Khanabad Drive
Missoula MT 59802
(406) 240-7957

March 22, 2023

To whom it may concern:

I am writing in support of Senate Bill 488. Common law marriage has no place in modern Montana.

When we were a frontier, common law marriage was appropriate. Now, it simply confuses our citizens. They don't understand when they are married and when they are not. I have heard, from more than one citizen, "we are 'only' common law married". If you are common law married, you are married. If you break up, you must get a divorce as there is no such thing as a 'common law divorce'. I believe there are Montanan's who are unwitting polygamists because of our antiquated notion of common law marriage.

Additionally, common law marriage causes issues in estate matters. The courts are forced to determine if parties were married or not. This is particularly challenging because one party to the alleged common law marriage is deceased.

For the above reasons (and others) I urge passage of Senate Bill 488.

Sincerely,

Patrick Quinn

Brad,

You may add Jamie McKittrick's and my names to the list of those who support termination of common law marriage. Jamie points out that the time and expense associated with a two part case, first to determine whether a marriage occurred and then to divide the marital estate is burdensome. My only concern with SB 488 is to clarify that this applies only to prospective common law marriage. The recording provision sounds nice, much like the declaration but there will be couples who acknowledge their common law marriage but don't know to record it. It appears the intent is not to disturb or invalidate current common law marriages but I wonder why they eliminated that language in the bill? I preferred the language that current common law marriages are not invalidated by this chapter remain in the statute for clarity and do not object to the language that was added to paragraph

1. As background for some folks who might not know, common law marriage was widely practiced and permitted due to necessity of frontier conditions where clergy or judge's were difficult to come by. The arguments and laws against common law marriages started in the late 1800s. Montana still being a frontier state enacted the law recognizing common law marriage in 1895. Brad is correct that very few states still recognize common law marriage. In abolishing common law marriage in Pennsylvania in 2003, a court stated: Many sound reasons exist to abandon a system that allows the determination of important right to rest on evidence fraught with inconsistencies, ambiguities and vagaries. The circumstances that created a need for the doctrine are not present in today's society. A woman without dependent children is no longer thought to pose a danger of burdening the state with her support and maintenance just because she is single, and the right of single parent to obtain child support is no longer dependent upon his or her marital status. Similarly, the marital status of parents no longer determines he inheritance rights of their children. Access to both civil and religious authorities for a ceremonial marriage is readily available even in the most rural areas... PNC Bank Corp. v. Workers' Comp App. BD., A2d 1269, 1279 (PA. Cmwlth. Ct. 2003).
2. As a matter of practice today, we are preparing co-habitation agreements for couples who decide to live together, adding another layer of expense. Cohabitation agreements are generally used by people of means, someone trying to protect his or her estate. I would venture most of the 57% of people who live together unaware of the issues until there is a death or the relationship goes sideways. There is also a common misconception amongst people about what constitutes a common law marriage; I've heard more than once that people think if they live together long enough they have formed a common law marriage. While its wishful thinking, we hope that absent the statute for common law marriage, people will protect themselves financially if they are contributing to a non-marriage relationship.

Thanks Brad for your work on this. As I said, please add Jamie and I to your list as supporting the elimination of common law marriage in Montana. Like I said, I would prefer the language be put back in to clarify that current common law marriages are not invalidated by this bill.

EVONNE SMITH WELLS WELLS & McKITTRICK, P.C. 222 EAST PINE P.O. BOX 9410 MISSOULA, MT 59807 (406) 728-7177 (406) 728-0790 fax

You can also add Tom Stanton to the list. Thanks.

EVONNE SMITH WELLS

WELLS & McKITTRICK, P.C.

222 EAST PINE

P.O. BOX 9410

MISSOULA, MT 59807

(406) 728-7177

(406) 728-0790 fax

WELLS & McKITTRICK, P.C.
Attorneys at Law

The information contained in this email is confidential and may also contain privileged attorney-client information or work product. The information is intended only for the use of the individual or entity to whom it is addressed. If you are not the intended recipient, or the employee of agent responsible to deliver it to the intended recipient, you are hereby notified that any use, dissemination, distribution or copying of this communication is strictly prohibited. If you have received the email in error, please immediately notify us by telephone, (406) 728-7177, or email and promptly delete the email that was inadvertently sent to you. Thank you.

From: Tom Stanton <tstanton@wandmlaw.com>
Sent: Thursday, March 23, 2023 9:46 AM
To: Evonne Wells <evowells@wandmlaw.com>; Jamie McKittrick <jjmckittrick@wandmlaw.com>
Subject: RE: Senate Bill 488 -- Invalidation of Future Common Law Marriages

I think it makes sense. I am on board.

Tom

Thomas H. Stanton

Attorney for Wells & McKittrick

222 East Pine St

Missoula, MT 59802

Phone 406-728-7177, Fax 406-728-0790

Office Hours: M-Thu 8:30 a.m. – 5:00 p.m., Friday 8:30 a.m.- 1:30 p.m. Due to COVID-19 we are asking that clients call our office before coming into visit us.

From: Matthew Enrooth
Sent: Monday, April 3, 2023 4:26 PM
To: Brad Belke
Subject: Senate Bill 488:Invalidation of Future Common Law Marriages

Brad,

You may add my name to the list of attorneys who support termination of common law marriage. I am in agreement with many of the points that our colleagues have addressed thus far. Common Law marriage has become a burden on the Court system, and in my opinion is no longer being used appropriately.

It is my experience that individuals are using the Common Law marriage argument in an attempt to create larger marital estates than what they may actually be entitled to. Additionally, cases involving individuals that have only been in relationships for short periods of time were the opposing parties are arguing that they are common law married in a blatant attempt to extort money out of their ex-boyfriend or ex-girlfriend. I have had multiple cases where these situations are present and happening or being presented by the opposing party as a possible legal tactic to obtain their desired outcome.

I am in support of SB-488.

Best,

Matt

Enrooth Law, PLLC
149 Ski Area Loop
Butte, MT 59701
406-533-9094
enroothlaw@gmail.com

From: Jackie Lenmark
Sent: Monday, April 3, 2023 6:27 PM
To: Brad L Belke (b.l.belke@gmail.com)
Subject: SB 488

I submitted the statement below on the direct link you sent. J T Lenmark.

I am a lawyer in private practice in Helena MT where I have practiced for 38 years. Much of my practice is in family law, either representing one party in a divorce or as a mediator for adverse parties who are divorcing. The uncertainties presented by a common law marriage add immeasurable strain on dividing a cohabitating couple's assets and debt because the division turns on whether the couple is married or not. Common law marriage is not determined by rules but rather by evaluation of an accumulation of facts that are ultimately determined by a court to constitute a marriage. Judges' determinations of marital status are always uncertain because evaluation of relevant facts is based upon case law developed from highly contentious litigation rather than common circumstances. SB 488 will provide couples living together certainty regarding their relationship and clarity for how the failure of that relationship will affect their decisions or status at the time. Montana is in a very small minority of states that still acknowledge common law marriage and a smaller minority yet that acknowledge it without clear rules. SB 488 is needed and well-drafted. It is prospective only while preserving the status quo of preexisting cohabitating couples. I strongly encourage a Do Pass As Amended vote. **Jacqueline T Lenmark Esq**|JACKSON MURDO & GRANT PC|jtlenmark@jmgattorneys.com

Gmail

Brad Belke <b.l.belke@gmail.com>

FW: Public Comment for Bill SB-488: Abolish common law marriage 2023-02-28 08:00 AM - (S) Judiciary Successfully Submitted on 02-27-23 14:31

1 message

Amanda Hunter <amanda@coppercitylaw.com> Tue, Feb 28, 2023 at 10:09 AM
To: "Brad Belke (b.l.belke@gmail.com)" <b.l.belke@gmail.com>

Here is the confirmation I got.

Best Regards,

/s/ Amanda D. Hunter

Amanda D. Hunter, Esq.
Attorney at Law
Copper City Law
444 E. Park Street
P.O. Box 4552
Butte, Montana 59702
(406) 920-9998
amanda@coppercitylaw.com
coppercitylaw.com
Montana State Bar No. 44088997
Colorado State Bar No. 47091

-----Original Message-----
From: leg-noreply@mt.gov <leg-noreply@mt.gov>
Sent: Monday, February 27, 2023 2:32 PM
To: Amanda Hunter <amanda@coppercitylaw.com>
Subject: Public Comment for Bill SB-488: Abolish common law marriage 2023-02-28 08:00 AM - (S) Judiciary Successfully Submitted on 02-27-23 14:31

We have received your testimony for the (S) Judiciary Committee.
If you want to remote participate you may still testify by resubmitting your testimony online or by calling the Information Desk at (406) 444-4800.

Details:
Bill: SB-488: Abolish common law marriage 2023-02-28 08:00 AM - (S) Judiciary
Position: Proponent
Representing an Entity/Another Person: No
Organization: N/A
Name: Amanda Dawn Hunter
Email: amanda@coppercitylaw.com
Phone: (406) 920-9998
City, State: Butte, Montana
Written Statement: I am an attorney in Butte, Montana and have been practicing for almost 10 years. I am in support of this bill, or frankly any bill that abolishes common law marriage to any and all degrees. The havoc and delay common law marriage claims cause to family and estate cases is appalling and only hurts families. Most claims in my experience are "stretch" marriage claims, but then have to be heard be heard by the Courts. Common law marriage, in practice has been a loop hole for partners to get more than they are entitled to. We live an a time and era where if two individuals want to get married they can EASILY do so. The act of not getting married means something or should mean something. And for those few respectable common law marriage claims, principles of equity would still exist for those individuals in those cases to ensure they are protected. Just as most states have already done, common law marriage should be abolished in the state of Montana as well.
Files:
Testify via Zoom: No"

U.S. TERM LIMITS (https://www.termlimits.com)

DISPELLING THE RUNAWAY MYTH

ADDITIONAL DOCUMENTS

by Nick Tomboulides

The biggest obstacle to a successful Term Limits Convention will be policymakers and concerned citizens who believe such a convention has the power to "run away" and open up the entire Constitution for revision. Under these wild scenarios, the Bill of Rights gets repealed and tyranny is foisted onto the American people. These fears have been seeded into many Americans' minds by groups like the John Birch Society and Eagle Forum.

First, it's important to note that those who subscribe to runaway convention thinking aren't less patriotic or doing so with wicked aims. Most do support term limits and other ideas that have been floated inside the Article V sphere. Our disagreement is on how to get there.

After consulting with the top experts, we've concluded that the arguments for runaway convention are without merit and not supported by the evidence.

Exhibit A in this discussion is America's very long and documented history of conventions. In the hundreds of state and interstate conventions that have taken place here in the founding era and beyond, none have ever run away. On rare occasions a delegate would suggest departing from the agenda, but that person would get nowhere because checks and balances were built-in, as they are here.

A common internet meme calling the Philadelphia Convention of 1787 a runaway is based on poor scholarship. The false narrative goes like this: Convention delegates only had the authority to amend the Articles of Confederation (America's first Constitution), but ignored that and threw the Articles on the scrap heap. Hence, it's said they jumped over their boundaries and ran outside the law.

In reality, 10 of the 12 state delegations at that convention had broad authority which included the ability to adopt a new Constitution. This was made explicit by the instructions their states gave them. Congress did *recommend* the Convention stay limited, but it was merely advice that bound no one legally.

Far from a runaway, the 1787 Convention was yet another example of an American convention doing exactly what it was told to do, whether broad or narrow.

Another defect in the runaway reasoning is identifying the stage at which unlawfully expanding the agenda is possible. If the state applications specify radical amendments, then that's not running away – it's attempting to create an entire convention based on bad ideas.

Once the Term Limits Convention applications get to Congress, there is no wiggle room for legislators to insert agenda items. Their role of convention caller is ministerial, and they are only allowed to choose between two options for ratification.

Delegates to the convention – who can be recalled and even imprisoned by their states — have some discretion, but it's limited to amendments within the subject area chosen by 34 states. The topic of term limits is so clear and unequivocal that it cannot be construed to include amendments on other subjects.

Any departure then, by either the delegates or Congress, would be unlawful and subject to judicial review. If groups come forward with lawsuits challenging an amendment to come out of convention, the courts can mediate that dispute.

The ultimate safeguard in Article V, however, is its very high bar for ratification. Remember: the convention itself has zero power to amend our Constitution. Its only power is to suggest amendments to the states, who hold the real power. Before any amendment becomes law, three-quarters of states (38) must ratify it. Even groups with popular – though not universal – ideas avoid using the Article V approach for this reason. Their issues don't have the backing term limits does and so they've concluded it would be a waste of time.

If popular groups on the left and the right don't think their amendments could be ratified, how then could anyone ratify a radical amendment that everybody hates?

It just couldn't happen. Notwithstanding the career-destroying scrutiny of hijacking a convention, there are just too many safeguards in place to allow fanaticism.

One final theory worth addressing is the notion that Congress will take over the convention to send its favorite radical amendments to the states. This is invalid for one obvious reason: Congress doesn't need a convention to do that. Under our Constitution, Congress can already send any amendment it wants to the states with a simple two-thirds vote.

This effectively deflates convention critics' favorite argument, by demonstrating that the powerful runaway convention they fear already exists and is called Congress. The Term Limits Convention, by contrast, is 1) less powerful than Congress, 2) more safeguarded and 3) carefully designed to rein in Congress rather than give it more power.

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CONSTITUTION, COURTS, & OTHER DEMOCRACY REFORMS

STOPPING A DANGEROUS ARTICLE V CONVENTION

Wealthy special interests are pushing for a dangerous constitutional convention that could put every American's rights up for grabs. It's on us to stop them!

A handful of wealthy special interest groups are just a few states away from calling a new constitutional convention. Under Article V of the Constitution, Congress is required to convene a constitutional convention if two-thirds of state legislatures (34 states) call for one.

No convention has ever been called under Article V for a reason: there is just too much at stake.

An Article V constitutional convention is a dangerous path that puts all of our cherished rights, civil liberties, and freedoms at risk. Other than the convention that drafted our Constitution, there has never been a constitutional convention in the nation's history; there is nothing stopping a new convention from rolling back our constitutional rights and civil liberties. Our right to vote, our right to free speech, our reproductive rights, our citizenship rules, and more could all be up for grabs.

With no rules and complete uncertainty about the constitutional process, an Article V convention would cause political and economic chaos. There is no language in the U.S. Constitution to limit a convention to one issue, no guidelines for rules to govern a convention, no rules on who picks the delegates and how they are selected, no guarantee that the American people would be equally represented, and no limits on corporate special interest influence.

Ultimately, this process would lead to long and costly legal battles, uncertainty about how our democracy functions, and likely economic instability.

Together, we can stop the wealthy special interest groups, including the Koch Brothers and the American Legislative Exchange Council (ALEC), who are spending big money to lobby state lawmakers and demanding an Article V convention to radically reshape our U.S. Constitution.

We have the expertise, the nonpartisan reputation, and the grassroots power to fight back. We're building coalitions with Democratic and Republican lawmakers to defend our Constitution from the far-right's Article V power grab.

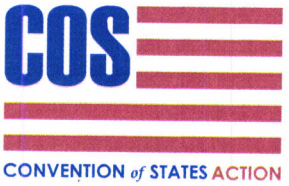
From Common Cause
https://www.commoncause.org/ourwork/constitution/courts-and-democracy-issues/article-v-convention/#

PROBLEMS IN THE TESTIMONY OF ROBERT BROWN

By Professor Rob Natelson

Problems in the Testimony of Robert Brown

By Robert G. Natelson[1]



[1]About the Author: *Professor Natelson is the director of the Article V Information Center at the Independence Institute in Denver and has published widely on many parts of the U.S. Constitution for the scholarly and popular markets. He is the most-published active scholar on the Constitution's amendment process, and the author of* THE LAW OF ARTICLE V, *a legal treatise. His research studies have been relied on by the highest courts of 16 states, by federal appeals courts in five cases, and by U.S. Supreme Court Justices in seven cases.*

Professor Natelson has degrees in history and law, the latter from Cornell University (J.D. 1973), where he was elected to both the Cornell Law Review *and the University Senate. (He chose the latter.) After practicing law (1974-85), he served as a tenure-track and tenured professor of law (1985-2010).*

Professor Natelson has split his professional experience between the public and private sectors. He also has extensive political experience: In Montana, he led several successful statewide ballot campaigns to restrain taxes and spending, and he placed second in a five-candidate field in the open party primaries for governor (2000). A more complete biography is at https://i2i.org/about/our-people/rob-natelson/.

"It is much easier to alarm people than to inform them."

—William Davie
Constitutional Convention Delegate

Early in my 25-year career as a legal academic I had an experience both humiliating and invaluable.

I was enjoying success placing research articles in academic journals on common legal topics. Then I researched and composed an article on the more exotic subject of classical Roman law, and I submitted it to a peer-reviewed legal history journal.

A "peer reviewed" journal is called that because other scholars anonymously examine and report on your article before the journal agrees to publish it. This ensures the contribution is well-grounded and adds to human knowledge.

Based on peer review of my submission, the journal's editor rejected it and provided me with a copy of the review to explain why.

The reviewer's assessment was devastating. He said it was obvious that I was writing without prior education in Roman law—that I knew little about scholarship in the field, and, frankly, I was clueless as to how much I didn't know.

I was emotionally crushed, but I also recognized that the reviewer was correct. And although the reviewer could have remained anonymous, he kindly disclosed his identity to me. He helped me work through my disappointment. He outlined what I needed to do before I could contribute to the very specialized realm of Roman law. I don't remember all his recommendations, but I do recall that one of them was to acquire some formal education on the subject.[2]

The experience taught me that I had fallen into the common error of undervaluing other people's specialties. (Think of all the disasters wrought by overconfident husbands who imagine they can do their own plumbing!) The experience also taught me that when researching a subject, you should gather as much information about it as possible: Never limit your universe of sources.

The experience had some implications for the reviewer as well. He told me he had a hard time writing his assessment, precisely because my paper lacked the foundation of basic knowledge of the field. If he were responding to a scholar who had some foundational knowledge, the review could have simply pointed out the mistakes, and perhaps suggest ways to correct them. But to respond effectively to a beginner, he also had to outline and explain many of the fundamentals.

Later I learned how time consuming this is. For example, when a lawyer has to thoroughly explain a legal conclusion to a non-lawyer, the lawyer first must outline basic concepts taught in law school before proceeding to the issue at hand. The difficulty increases exponentially when the non-lawyer thinks he's already an "expert" in the subject, and has reached a different conclusion. Such people never want to believe the truth, so the lawyer has to pile up sources to support the most elementary propositions.

This is one reason lawyers tell each other, "Never argue law with a non-lawyer." Much the same is said in other specialties as well, and often less politely.

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[2] *After additional research over several years, I was able to publish a related article that did not require as much specialized knowledge:* Robert G. Natelson, The Government as Fiduciary: Lessons from the Reign of the Emperor Trajan, *35* Richmond L. Rev. *191 (2001).*

This is such a case: Robert Brown is a novice who promotes himself as an expert. So to explain why his conclusions are incorrect, you often have to review the basics understood by all true experts. That is why this paper is so long.

Background

Robert Brown is an employee of the John Birch Society (JBS). Videos of his performances before legislative committees show that he holds himself out as a "nationally known constitutional scholar."[3] He or JBS apparently used like representations of expertise to obtain an interview with Joshua Philipp of the *Epoch Times*, an international newspaper.

However, Brown's biography shows none of the background or hard work necessary to make one a constitutional scholar, much less a "nationally known" one.[4] There is no evidence of formal, or

Brown's biography shows none of the background or hard work necessary to make one a constitutional scholar, much less a "nationally known" one. There is no evidence of formal, or even informal, training in law, history, or language. A search of an academic database revealed no evidence that he has published any scholarship on the Constitution or on anything else.

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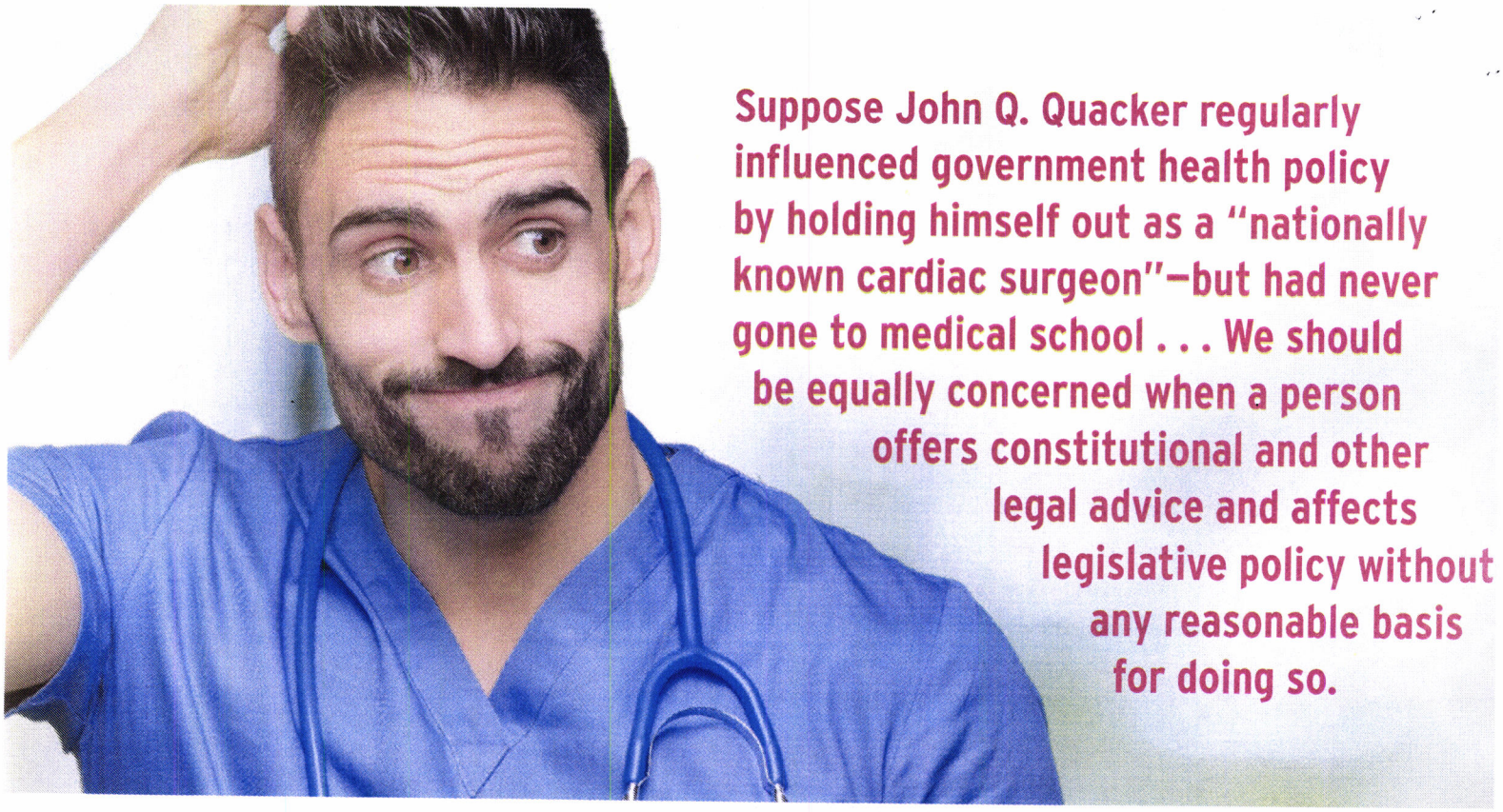
[3] https://youtu.be/aeaAfCdQk18. *The video shows Mr. Brown representing himself as a "nationally known constitutional scholar" at legislative hearings in North Dakota, South Dakota, and South Carolina.*

[4] *Mr. Brown's official JBS biography is sketchy. It tells us only that "he and some buddies started a bicycle design company for a few years," that he has worked for JBS since 2009 and that he raises chickens and goats on two acres of land.*



Suppose John Q. Quacker regularly influenced government health policy by holding himself out as a "nationally known cardiac surgeon"—but had never gone to medical school . . . We should be equally concerned when a person offers constitutional and other legal advice and affects legislative policy without any reasonable basis for doing so.

even informal, training in law, history, or language. A search of an academic database revealed no evidence that he has published any scholarship on the Constitution or on anything else.[5]

I recognize, of course, that everyone has a First Amendment right to express his or her opinion, expert or not. But no one has the right to mislead legislators on important matters of law and policy under the cover of false credentials.

To use an analogy: Suppose John Q. Quacker regularly influenced government health policy by holding himself out as a "nationally known cardiac surgeon"—but had never gone to medical school, never served a residency, and never performed an operation. We would be justifiably concerned. We should be equally concerned when a person offers constitutional and other legal advice and affects legislative policy without any reasonable basis for doing so.

Yet Brown has repeatedly purveyed constitutional and legal advice, frequently on the very important issue of whether state lawmakers should apply for a convention for proposing amendments to the United States Constitution. Brown's statements are based on citations, sometimes out of context, from only a narrow sliver of the sources constitutional scholars employ in their work.[6]

The Interview

To illustrate the problems in Brown's approach, I have chosen his *Epoch Times* interview with Joshua Philipp. The interview is 30 minutes long. This paper quotes relevant excerpts, and then

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[5] *Publishing in scholarly journals subjects one's work to review and critique from others knowledgeable in the subject.*

[6] *Constitutional scholars work with 18th century law books, cases and statutes; the 18th century educational canon (including the Greco-Roman classics); British parliamentary records; political and philosophical works influential with the Founders, such as those by Aristotle, Cicero, Locke, Montesquieu and DeLolme; colonial charters and instructions to colonial governors;*

responds to each. The footnote below provides a link to the entire interview.[7]

★ ★ ★ ★

Joshua Philipp: *"Hey, welcome back everyone. . . . Robert Brown. He's a constitutional expert with the John Birch Society. And Robert, it's a real pleasure to have you on Crossroads. . . . Now, I'm curious from your standpoint, what is the Convention of States? How would you describe it?"*

Robert Brown: *"Convention of States is an organization pushing to use the second method in Article V for obtaining changes or amendments to the Constitution. . . . . Yeah, in Article V it talks about two different ways of amending or changing the Constitution."*

Correction: Mr. Brown's response is inaccurate in two respects. First, he fails to distinguish between a "convention of states" as a constitutional mechanism and the Convention of States Project, which is one of several organizations trying to bring about such a convention.

Second, he erroneously states that there are two ways of amending the Constitution. In fact, there are four: (1) proposal by Congress, ratification by state legislatures, (2) proposal by interstate convention, ratification by state legislatures, (3) proposal by Congress, ratification by state conventions, and (4) proposal by interstate convention, ratification by state conventions.

It would have been correct to say that there are only two ways of *proposing* amendments. However, Brown and other convention critics often fudge the difference between proposal and ratification to suggest, falsely, that a convention alone, without state ratification, could impose constitutional change. The Constitution and many other sources (see *Notes*) make it absolutely clear this is not so.

Brown also conflates proposal and ratification elsewhere in the interview, as explained below.

★ ★ ★ ★

Brown: *"So, the second method has never been used before. We've been well over 200 years under the current constitution, and it has been brought up a number of times throughout our nation's history."*

Correction: This is a half-truth, because it understates the role the Constitution's application-and-convention process has played in American history. Although the process has not been used to *completion*, states have adopted hundreds of "applications" for a convention, and on several occasions America has been quite close to one. On several occasions as well, application campaigns have forced Congress to propose amendments or take other action. Without the convention process, it is very likely neither the Bill of Rights nor the 17th nor 22nd Amendments would have been adopted.

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pre-1787 state constitutions; debates in the state legislatures and state ratifying conventions; newspaper articles and speeches; and the records of the Continental, Confederation, and First Federal Congresses. These materials sprawl over hundreds of volumes. Practicing constitutional lawyers increasingly use the full range of this material as well.

Fully competent constitutional scholarship also requires some background in the Latin language. See Forrest McDonald, Novus Ordo Seclorum xi *(1985) (Professor McDonald was arguably our greatest 20th century constitutional historian).*

[7] *https://m.theepochtimes.com/video-arguments-against-the-convention-of-states-interview-with-robert-brown_3754686.html*

★ ★ ★ ★

Brown: *"James Madison in particular. . . strongly pushed against achieving the Bill of Rights through an Article V Convention, saying it was a more dangerous mode than Congress. He uh- in fact, a letter to George Turberville, November 2, 1788, he says he would* tremble *at the results of a convention. . . . ."*

Correction: JBS borrows many of its arguments from liberal sources opposed to a convention, and this is one example.

The myth that Madison—the principal author of Article V—opposed its provision for conventions apparently was invented by liberal lawyer Arthur J. Goldberg in 1983.[8] Madison's full correspondence on this subject includes at least twelve other letters, and it tells quite a different story.

Madison's full correspondence tells us that he did not oppose Article V conventions in general; he opposed only a specific proposal for a convention to re-write the entire Constitution. In that correspondence, moreover, Madison also wrote he would be fully agreeable to holding a convention in a year or two, after some experience under the new government. In a letter written later in life, Madison endorsed an amendments convention over the favorite JBS "solution" of nullification.[9]

★ ★ ★ ★

Philipp: *"Now, on the Convention of States, you mentioned that you—you kind of see the same problems but you—you don't think that—that the model of using it to amend the Constitution is a good model. Why not? What is the argument against it? What would you say?"*

Brown: *". . . Given today's political environment, if we were to pull up the anchor of the U.S. Constitution and drift to the* center *of political thought today, do you feel that would move us closer to the views of Marx or Madison? And obviously, our nation has moved far more towards the socialist mentality than we were in 1787 when the Constitution was originally written . . . ."*

Correction: Convention advocates explicitly rule out "pull[ing] up the anchor of the U.S. Constitution." They seek only (in the Constitution's words) *"a convention for proposing amendments" "to this Constitution."*

JBS claims it is a bad time for a convention, and it has been making that claim for decades, no matter what the political conditions. It is clear that JBS does not consider any time to be good.

Practically speaking, right now probably *is* a good time for a convention to propose conservative-leaning amendments: Thirty-one state legislatures are Republican. Congress is deeply unpopular, and its narrow Democratic majority is widely viewed as overreaching. The present justices on the Supreme Court and other federal courts are the most favorable in years.

★ ★ ★ ★

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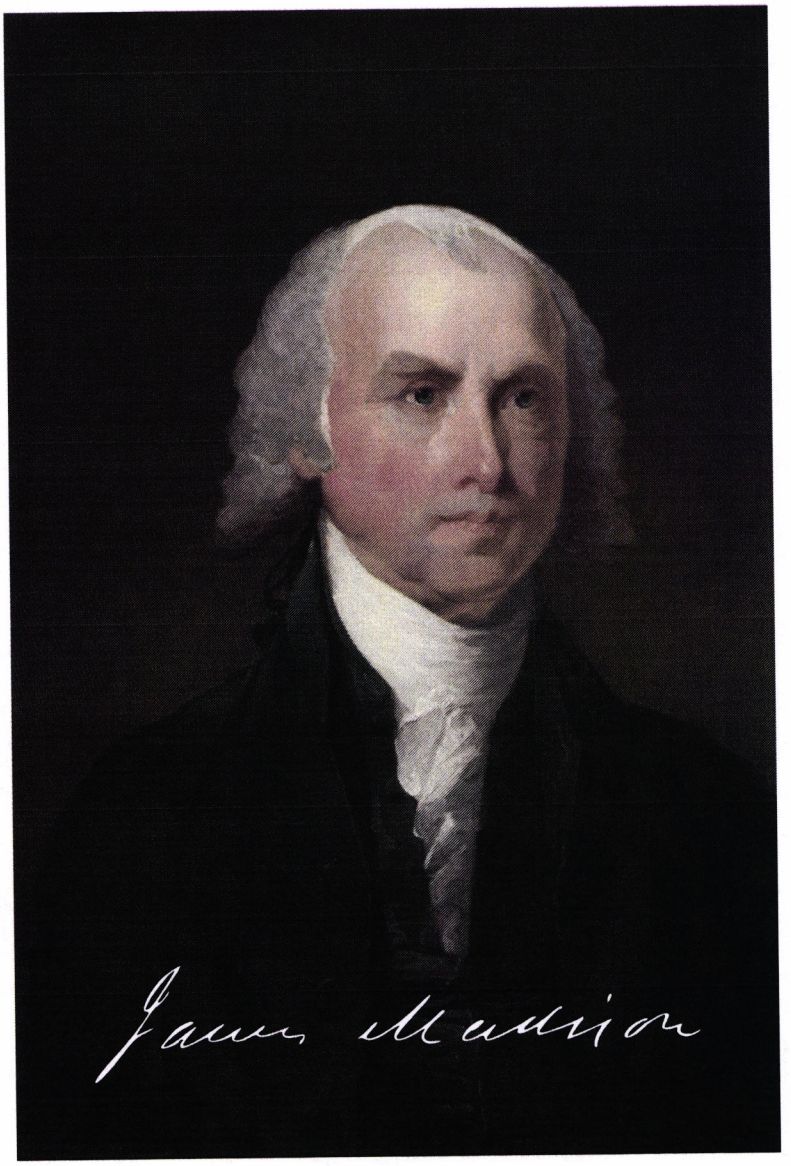
[8] Arthur J. Goldberg, Commentary: The Proposed Constitutional Convention, *11 Hastings Const. L.Q. 1 (1983).*

[9] *I have collected Madison's correspondence on the subject at the Article V Information Center webpage at https://articlevinfocenter.com/what-madison-really-said-in-1788-and-1789-about-holding-a-second-convention/. On a Montana radio show several years ago, I informed Mr. Brown of this correspondence, what it said, and where to find it.*

Madison's full correspondence tells us that he did not oppose Article V conventions in general; he opposed only a specific proposal for a convention to re-write the entire Constitution. In that correspondence, moreover, Madison also wrote he would be fully agreeable to holding a convention in a year or two, after some experience under the new government.



Philipp: *"Now, I know proponents of it, they argue that—y'know, they can preven- they can propose amendments, but they're saying that you can't* undo *current rights within the Constitution. Is this accurate? What do you—what do you think on this?"*

Brown: *"It's really not [accurate] . . . . The problem is,* historical precedent *does say otherwise. And this is probably* the *number one most important argument between the two sides, is* what *does the historical precedent say?"*

Correction: There is no "important argument between the two sides" about historical precedent, because opponents really don't cite any.

Historical precedents include (1) about forty conventions of states and colonies since 1677, (2) hundreds of convention applications, and (3) a line of reported Article V court decisions dating back to 1798. (The case law is discussed in my treatise, *The Law of Article V*.) Out of all this material, Mr. Brown selects only one incident occurring more than 200 years ago—and as we shall see, even his understanding of that incident is wrong.

★ ★ ★ ★

Brown: *"The 1787 Convention, where our constitution was written, is really the* only *national constitution amending convention we've ever had."*

Correction: That's not true. A national amending convention was held in Washington, D.C. in 1861. More states participated in that convention than at any convention of states before or since.[10] In addition, the Albany Congress of 1754 and the First Continental Congress of 1774 were national conventions that proposed what were then basic constitutional changes.

Even if Brown's comment were technically true, it would be deceptive. This is because regional and national conventions of states operate under much the same protocols, including (1) limited and defined powers and (2) equal voting power for each state. The Article V Information Center provides a complete list of these conventions.[11]

★ ★ ★ ★

Brown: *"And in that case we have the existing constitution as the Articles of Confederation."*

Correction: The Articles of Confederation were not a constitution as we think of one, and the Confederation Congress was not a government. The Articles were a multilateral treaty something like NATO. The Confederation Congress was a limited coordinating body much like NATO's North Atlantic Council.

In thinking of the Articles as a "constitution" in the modern sense, Mr. Brown commits a common error in historical method called *anachronism*.

★ ★ ★ ★

Brown: *"States sent delegates to the 1787 Convention and gave them* specific delegate

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[10] *For a summary, see* It's Been Done Before: A Convention of the States to Propose Constitutional Amendments, https://articlevinfocenter.com/its-been-done-before-a-convention-of-the-states-to-propose-constitutional-amendments/.

[11] List of Conventions of States and Colonies in American History, https://articlevinfocenter.com/list-conventions-states-colonies-american-history/.

commissions, *or authority.*"

Correction: As noted above, the 1787 convention is the sole precedent opponents cite. Their fundamental argument is that the 1787 conclave exceeded its authority ("ran away"). From that, we are supposed to fear a more limited convention held under very different conditions over 230 years later.

Even if it were true that the 1787 convention had exceeded its authority (and, as explained below, it is not true) that is not very good evidence of what would happen in a convention of states today.

First: There have been about forty conventions of states, many after 1787.[12] They were governed by procedures that have become standardized, including rules limiting their authority. Everyone concedes that the other conventions remained within their authority. Certainly thirty-nine offer much more precedential weight than just one.

Second: The 1787 convention was not called under the Articles of Confederation. It operated outside of any legal restraint other than the delegates' commissions. By contrast, a convention for proposing amendments is called under the Constitution and is subject to the rules of the Constitution. Over a century of decided case law affirms that.

Third: On the modern convention floor, any commissioner raising issues outside the prescribed agenda can be reined in with a simple point of order.

Fourth: Modern technology enables the state legislatures commissioning delegates to use video oversight to track them 24/7. If a straying delegate somehow were not brought back to order, a supervising state legislative committee would see the incident in real time and could immediately re-instruct or recall.

★ ★ ★ ★

Brown: *"States sent delegates to the 1787 Convention and gave them* specific delegate commissions, *or authority. You're authorized to make these types of changes; you're not authorized to change these things . . . Mark Meckler, Convention of States, organizations like that, will repeatedly claim those convention delegates were given* full *authority to make* any *changes they felt were necessary to the Articles of Confederation. Now, if that were true, do you think that delegates would have known that? And the reason I say that is because, as you look through Madison's notes from the federal convention, you see this issue came up* repeatedly *throughout the Convention: do we actually have the authority to be creating a* new *constitution, instead of just amending the Articles of Confederation? . . . .*

"First side said things like, 'We really don't have the authority and we should not proceed with changing the Constitution this drastically without first going back to the States and getting further authority.' That was the argument of William Patterson, uh Charles Pinckney, Elbridge Gerry[13], John Lansing.

"The other side of the argument was not what Mr. Meckler says, 'They have full authority.' The

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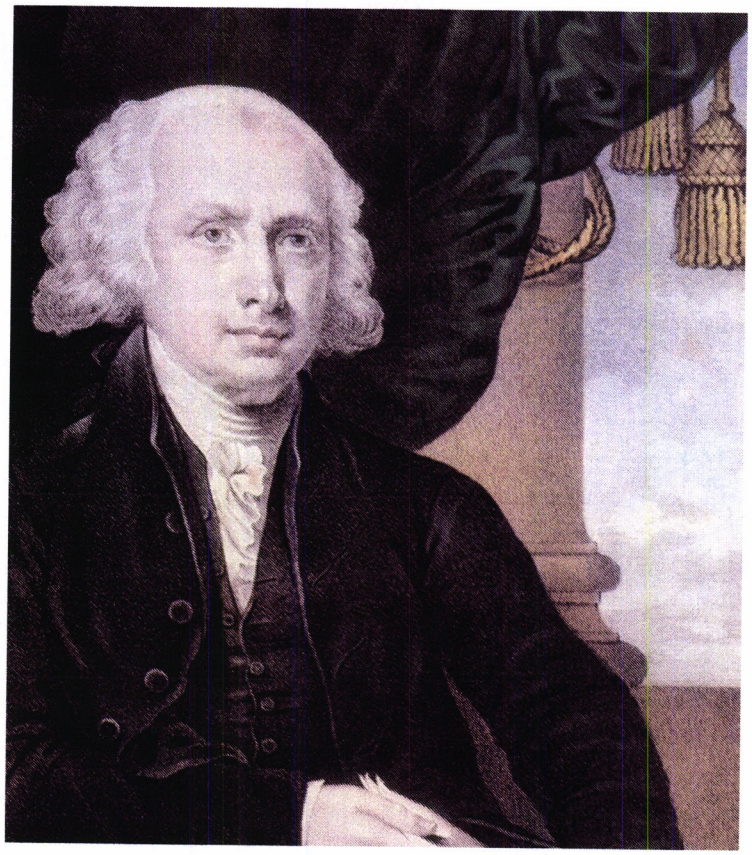
[12] *See the previous footnote.*

[13] *In this interview Brown makes an error no genuine constitutional scholar would make: He pronounced Elbridge Gerry's last name with a soft "g" (like "Jerry") rather than how Gerry actually pronounced it (with a hard "g"). It seems like a small mistake, but such mistakes are clues to whether the speaker knows what he or she is talking about.*



other side of the argument represented by people like Edmund Randolph, Alexander Hamilton, even James Madison, was, 'You're right, we really don't *have the authorization to be doing this, but we need to do it anyways. This is an* urgent *need of our nation. . . . We must proceed.'*

"Nobody stood up in the 1787 Convention and claimed, 'Look at our commissions, we're fully authorized to make any changes we feel are necessary.'"

Correction: These comments depart from the traditional JBS line, which is that *Congress* called the 1787 convention and limited it to proposing only amendments to the Articles. However, modern research has made that position untenable, so I am glad to see Mr. Brown abandon it.

Madison points out in Federalist No. 40 that the state-issued commissions (or "credentials") defined the scope of the convention's authority.

Madison points out in Federalist No. 40 that the state-issued commissions (or "credentials") defined the scope of the convention's authority. Founding-era law books confirm this rule.

Founding-era law books confirm this rule. Now, among the 12 states participating in the 1787 convention, all but two (Massachusetts and New York) issued commissions conveying full power to propose a new form of government. The general public overwhelmingly shared the expectation that the convention would propose a new form of government—some imagined it might be a monarchy!

Brown points to statements by commissioners questioning the extent of their authority. *But what determines whether the 1787 convention "ran away" is what the commissioners' credentials said, not what anyone said they said!*

There were several reasons why commissioners might rhetorically question their authority. Some represented one of the two states granting narrower powers, such as New York's John Lansing and Massachusetts' Elbridge Gerry. Virginia's

Edmund Randolph clearly did not buy the "no-authority" argument, but like the good advocate he was, he conceded it *arguendo* (for sake of argument) and built his case on practical rather than technical legal grounds. William Paterson of New Jersey denigrated his authority for strategic reasons—to strengthen his case for equal state representation in the Senate. Once Paterson achieved his goal, he dropped the argument and urged creation of a strong government.

Brown's restriction to a narrow range of sources prevented him from learning that during the ratification debates the Constitution's advocates addressed the issue. They vigorously defended the delegates' actions as authorized by their commissions.[14]

★ ★ ★ ★

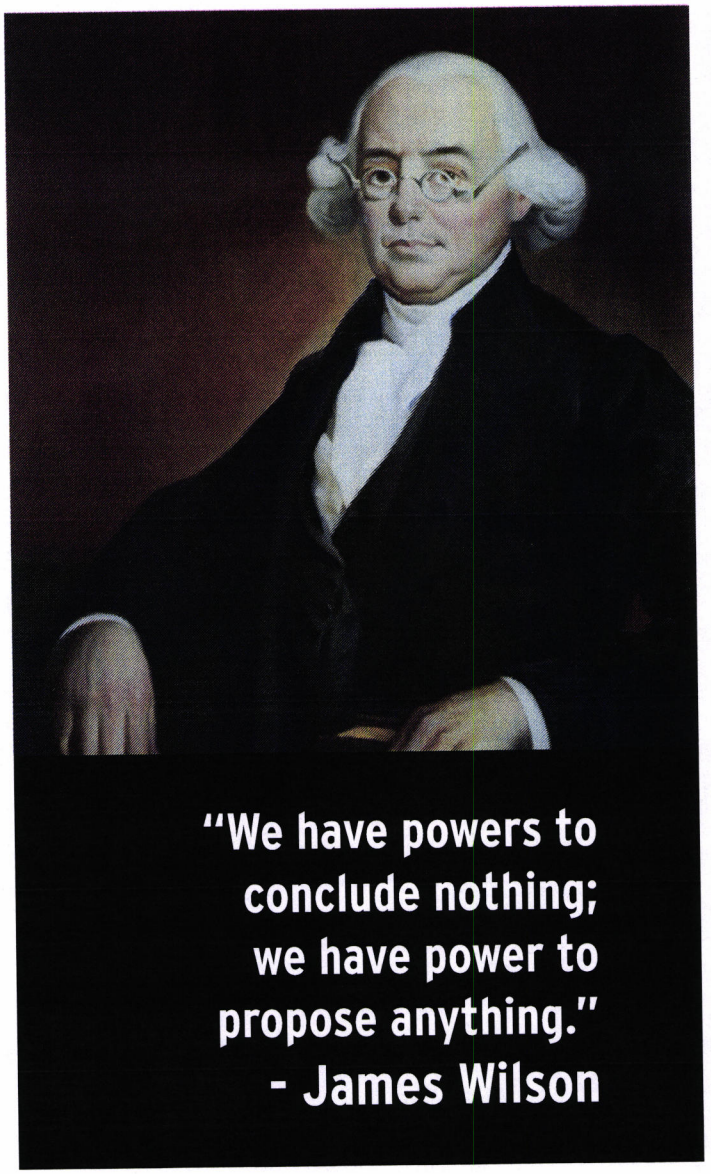
Brown: *"In fact, one of the challenges I* repeatedly *put out to the other side, they never want to answer this: show me the delegate. Show me the delegate who made that claim, 'We have full authority.'"*

Correction: Mr. Brown has never put the challenge to me. I would have responded by naming James Wilson, who told the Convention, "Relative to the powers of this convention—We have powers to conclude nothing; *we have power to propose anything."* [15]

★ ★ ★ ★

Brown: *"Instead, what they did was, and this comes directly from James Madison, I'm going to read it to you directly. They said that* people *were in fact, the fountain of all power, and by resorting to them, all difficulties were got over."*

Correction: This is another example of opponents conflating proposal with ratification. As Madison (in Federalist No. 40) and other Founders made clear, the power to propose came from the states via their commissions to



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[14] *See, e.g.*, Carlisle Gazette, *Mar. 12, 1788, in* 34 DOCUMENTARY HISTORY OF THE RATIFICATION OF THE CONSTITUTION 1014, 1016.

[15] *1 Farrand's Records 266 (Jun. 16, 1787) (as reported by Rufus King).*

the delegates. The power to *ratify* came from the people, who elected delegates to their state ratifying conventions.

★ ★ ★ ★

Brown: *"They were also given a constitutionally defined ratification process, they threw it out, retroactively created a much lower bar . . . ."*

Correction: Mr. Brown's claim is that (1) the Constitutional Convention provided for ratification by nine states rather than the thirteen required by the Articles, so therefore (2) a modern amendments convention might alter the ratification process as well.

Constitutional scholars consider this as one of the "runaway" alarmists' loonier ideas. It is based on utter ignorance of governing law, both in 1787 and now. Specifically:

- As noted before, the 1787 convention was not held under the Articles of Confederation. It was held under reserved state powers retained by signatories of treaties and recognized explicitly by the Articles. The convention could, therefore, propose any method of ratification it chose. Incidentally, the Confederation Congress approved the convention's actions when it forwarded the Constitution to the states and urged them to hold ratifying conventions.[15]

- A convention for proposing amendments, by contrast, receives its power from the Constitution and is subject to its rules, including ratification rules. One of the clearest principles from 223 years of Article V court decisions is that no participant in the amendment process may change the Constitution's amendment rules. But Mr. Brown never mentions case law. From listening to him you'd think the courts never issued an Article V ruling and all we have to go on is what allegedly happened in 1787. Yet there are hundreds of cases defining general constitutional principles and dozens more interpreting Article V.

- Nor do alarmists tell us how, if a convention purported to change the ratification rules, it could enforce its decision. Call out the army?

★ ★ ★ ★

Brown: *"[T]he precedent they set was, these types of conventions represent, not the States, not the legislatures, but they represent the people* themselves . . . ."

Correction: It is unclear what Mr. Brown means by "these types of conventions." If he is referring to conventions that deal with constitutional issues, then his statement is only a half-truth.

Conventions elected directly by the people within a particular state—sometimes called constituent conventions—represent the people. Constituent conventions were used to ratify the U.S. Constitution and the 21st amendment. They also are employed to propose and ratify state constitutions.

Interstate conventions whose commissioners are selected as directed by state legislatures are called *conventions of states* or *conventions of the states*. They answer to the states or state legislatures directly, so they represent the people

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[15] *Did Congress Approve the Constitution? A Member's Letter Says "Yes"*, https://articlevinfocenter.com/did-congress-approve-the-constitution-a-members-letter-says-yes/.

only in a remote sense. When called under states' reserved powers, conventions of states meet to propose solutions to common problems—such as coordinating state laws or negotiating water compacts. When called under Article V of the Constitution, they may propose amendments to the states for ratification. My treatise, *The Law of Article V*, discusses the legal differences among conventions.

★ ★ ★ ★

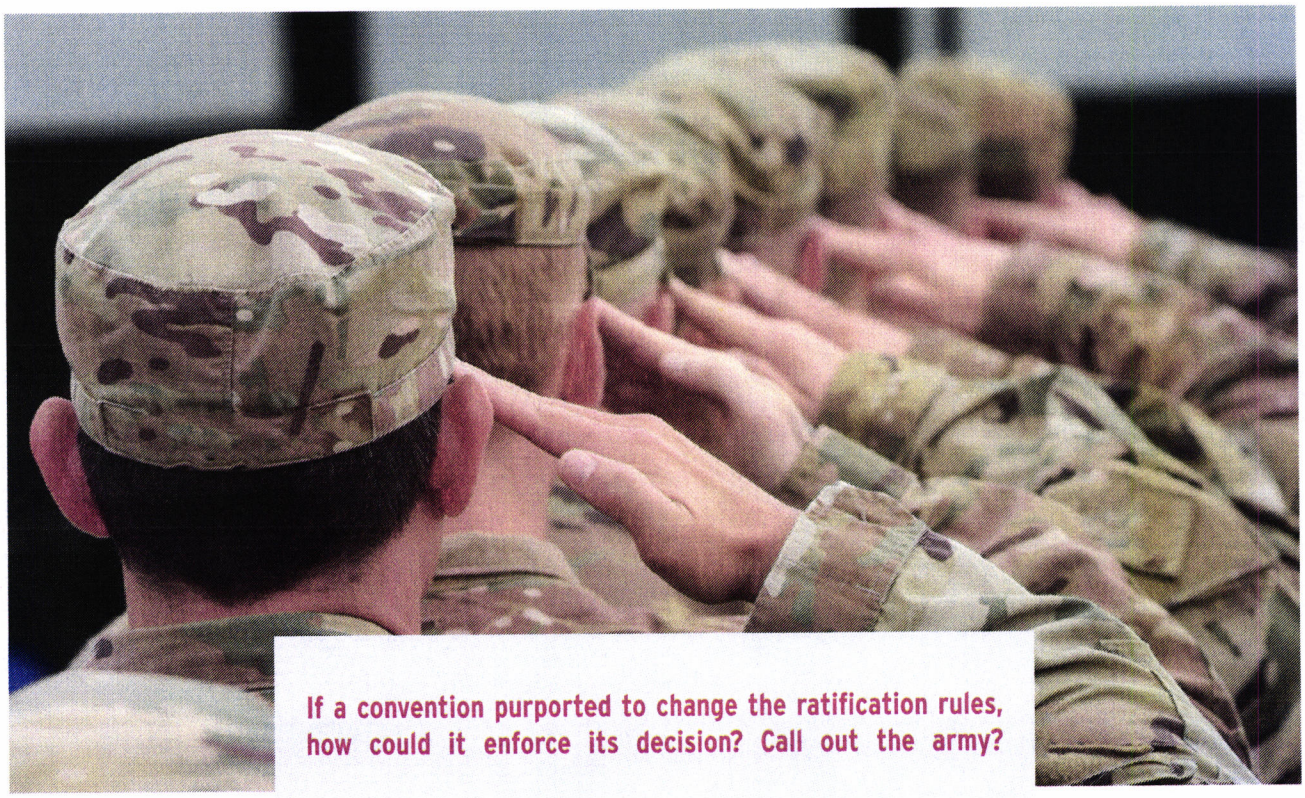
Brown: *". . . and as such their power cannot be limited. Now, we've seen that same precedent upheld* repeatedly *in state conventions ever since. I mentioned the Montana one, for example."*

Correction: This is legal nonsense. Conventions—even those that represent the people directly—usually *are* limited. Brown cites the 1972 Montana constitutional convention as an unlimited body. But the Montana Supreme Court specifically held that its powers were limited. *State of Montana ex rel. Kvaalen v. Graybill*, 496 P.2d 1127 (Mont. 1972).

Unless a convention is acting in absence of an established government (as in some states at the opening of the American Revolution), it is always limited to some extent. For example, a state convention called under an existing constitution may not be subject to the legislature, but it is limited by the terms of the existing constitution. When state conventions were being considered to ratify the 21st Amendment, some people argued they would be unlimited—but court adjudication determined otherwise. As noted earlier, the courts have ruled repeatedly that all assemblies operating under Article V are bound by the rules laid out in the Constitution.

★ ★ ★ ★

Brown: *"In fact, if you look to the—the law journal that's called* Corpus Juris Secundum, *that's a collection of various Supreme Court rulings from*



If a convention purported to change the ratification rules, how could it enforce its decision? Call out the army?

Every first-year law student learns that Corpus Juris Secundum's text is not fully trustworthy and should never be cited as authority. It is used principally as a case finder.

the States all across the country, and we've seen consistently *the same thing."*

Correction: Where do we begin with this one? There is so much error from which to choose!

First: Contrary to Mr. Brown's description, *Corpus Juris Secundum* (CJS) is not a "law journal." It is a legal encyclopedia that attempts to summarize law on all topics.

Second: CJS is not a "collection of various Supreme Court rulings." It is principally a legal text with supporting citations from federal and states appellate courts at all levels.

Third: Every first-year law student learns that CJS's text is not fully trustworthy and should never be cited as authority. It is used principally as a case finder. You have to read the cases it cites to find out what the law is, then expand your research to find other cases on the same topic.

Fourth: Mr. Brown apparently didn't read the cases referenced in the part of CJS he mentions. If he did, he'd know they have nothing to do with Article V conventions. He would also learn that those cases are all very old. They were decided long before most Article V court rulings were issued. Thus:

- In *Cox v. Robison*, 105 Tex. 426, 150 S.W. 1149 (1912), the facts were that in 1866, the former Confederate state of Texas was under federal military occupation. As commander-in-chief of the U.S. armed forces, President Andrew Johnson called for a Texas state constitutional convention. The court held that the state constitution did not have to be ratified by the people *because the president had not required it*. (Presumably he could have limited the convention by requiring it.)

- *Frantz v. Autry*, 18 Okla. 561, 91 P. 13 (1907) dealt with a local constitutional convention Congress had authorized in what was then the Territory of Oklahoma. The case held that the convention had all the power Congress gave it, and that Congress had imposed only a few limits. The cases said the convention needed to respect only the limits Congress imposed.

- *Koehler & Lange v. Hill*, 60 Iowa 543, 14 N.W. 738 (1883) held that when any constitution prescribes an amendment procedure, that procedure must be followed. It added "The powers of a convention are, of course, unlimited. The members thereof are the representatives of the people, called together for that purpose." But the court was speaking of state constitutional conventions, not federal conventions, and this case is contradicted by later authority, such

as State of *Montana ex rel. Kvaalen v. Graybill*, 496 P.2d 1127 (Mont. 1972), mentioned above.

- *Loomis v. Jackson*, 6 W.Va. 613 (1873) says that "A [state] constitutional convention, lawfully convened, does not derive its powers from the legislature; but from the people. The powers of such a convention are in the nature of sovereign powers." But in this country, we frequently limit sovereignty, and a convention's authority can be limited by an existing constitution.[16]

- *Sproule v. Fredericks*, 69 Miss. 898, 11 So. 472 (1892) examined the power of a state constitutional convention called by the legislature. It ruled that the convention's power was very broad, but also acknowledged that its power could have been limited.

Again, nothing in these five decisions had anything to do with Article V.

So much for Mr. Brown's cases. I've taken some time to examine his misuse of CJS because it illustrates the conceptual chaos that ensues when someone ignorant of law starts interpreting legal texts and spouting legal advice.

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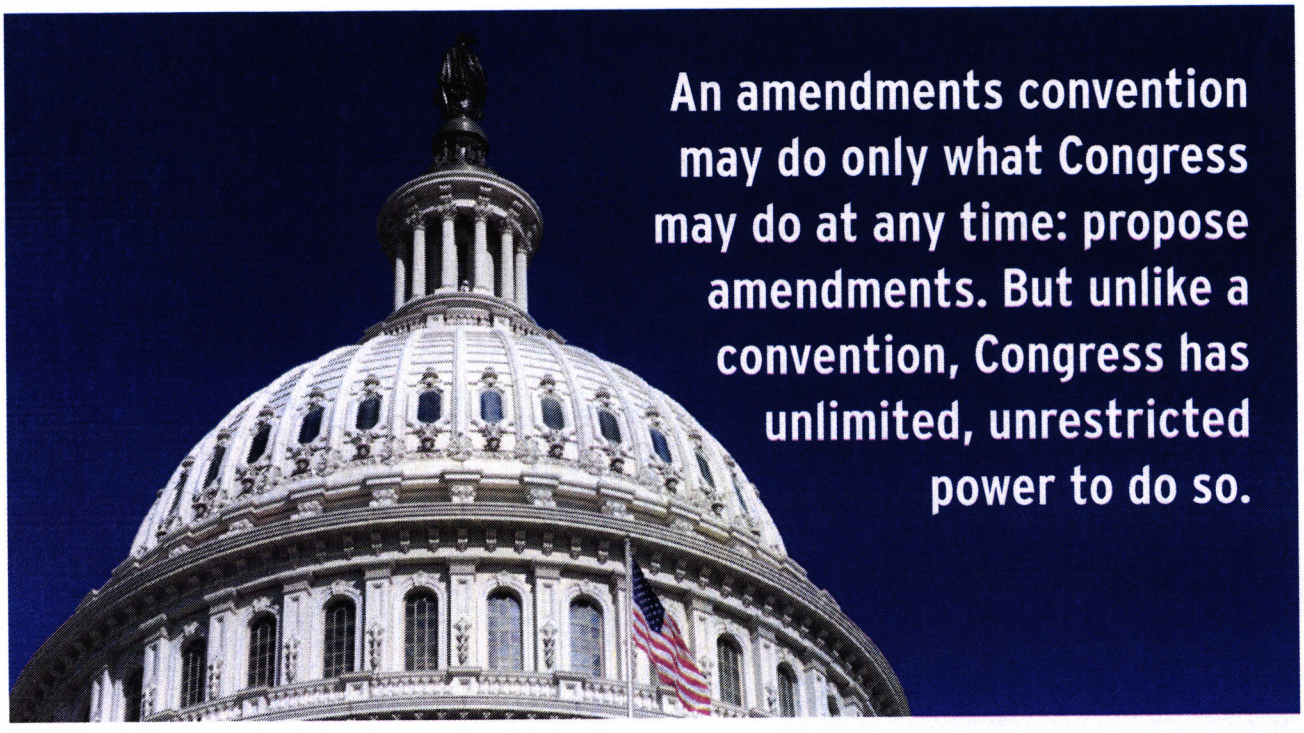
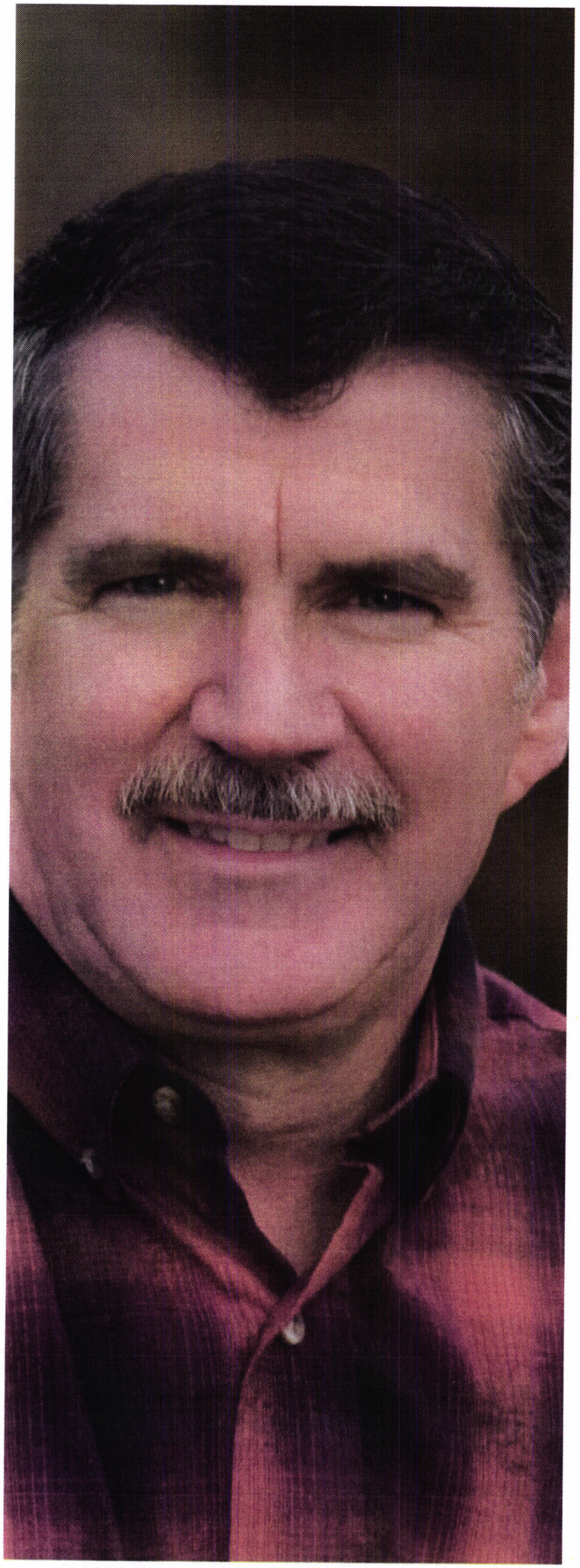
Brown: *"Congress is essentially—they often refer to it as a sitting constitutional convention themselves. Madison differentiated between them. Again, as I mentioned as he was putting out his opposition to an Article V Convention, he said that in his view, the* Convention *would feel much greater latitude in making sweeping changes to the Constitution than Congress would, which is why he said Congress is the safer mode."*


An amendments convention may do only what Congress may do at any time: propose amendments. But unlike a convention, Congress has unlimited, unrestricted power to do so.

[16] *Incidentally, another line in the* Loomis *case contradicts the common JBS claim that Congress could control an amendments convention: "That the legislature can neither limit or restrict [conventions] in the exercise of these powers . . . ."*



MR. BROWN CLAIMS HE ORGANIZED A GROUP TO PRESSURE REP. DENNY REHBERG... BUT AFTER BROWN STARTED HARASSING HIM, REHBERG'S RATING DROPPED TO 80% IN 2011 AND 76% IN 2012–HIS LOWEST SCORES EVER.

Correction: As already discussed, Madison was not opposed to amendments conventions. The reason he opposed New York's 1788 proposal was because its scope was too wide and it came too early. But very few convention applications have been as broad as that. The applications being passed today are all quite focused.

In this passage Mr. Brown does inadvertently allude to an inconvenient fact: An amendments convention may do only what Congress may do at any time — propose amendments. But unlike a convention, Congress has unlimited, unrestricted power to do so.

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Brown: *"Congress already pretty much does whatever they want to with regards to what the Constitution says, for the most part. And the only reason they get away with that, is we the people don't hold them to it . . . .*

"When I first moved to Montana about a decade ago, I organized a couple hundred people, and we started holding our congressman accountable to his voting as it squared with the Constitution. At the time, his "constitutional rating," so to say, was somewhere around 40-60%. He was always right in the middle. About half the time he'd follow the Constitution, half the time he wouldn't. Within four months, he was at 80% and thereafter he was stated at 90%, because we started pushing on him on . . . ."

Correction: This prescription for curing the federal government is terminally naïve. The majority of members of Congress, particularly the leadership, are long-time holders of "safe" seats and immune to popular, pro-Constitution lobbying. Indeed, they hold their seats largely by *violating* the Constitution.

The Congressman referred to is Rep. Denny Rehberg (R.-Mont.), who was in office from 2001 to early January 2013. Mr. Brown claims he organized a group to lobby Rehberg "about decade ago" — i.e., sometime between 2009 and 2011. Now, if anyone was amenable to "constitutionalist" lobbying, Congressman Rehberg should have been. He served a swing district, and I know from personal acquaintance that he has conservative values.

But did Brown's lobbying really have any effect? The American Conservative Union ranks members of Congress by their commitment to smaller, constitutional government. The ranking is on a scale of zero to 100.

Rehberg was rated for the years 2001 through 2012. His ACU voting record for each year was as follows:

2001 - 84%
2002 - 100%
2003 - 84%
2004 - 96%
2005 - 92%
2006 - 83%
2007 - 88%
2008 - 84%
2009 - 92%
2010 - 96%
2011 - 80%
2012 - 76%

If there is any pattern in their figures at all—and I'm not sure there is—it suggests Brown's efforts may have been counterproductive. In the years including and up to 2010, Rep. Rehberg's ACU score had ranged from 84% to 100%. But after Brown started harassing him, Rehberg's rating dropped to 80% in 2011 and 76% in 2012—his lowest scores ever.

In theory millions of Americans could pressure members of Congress to change. But as a matter of historical record, this does not happen: The organizational costs for conservative Americans are too high. Professional lobbyists concentrated in Washington, D.C., are paid big money to lobby, and they do it continuously. They offer concrete benefits beyond what the conservative grassroots can offer, such as connections to many large political donors. They enjoy the support of the national media, which has strong incentives to concentrate power at the federal level.

There are good people in Congress. But as they acknowledge, they need firm rules to restrain their behavior and enable them to justify voting against certain programs. Only constitutional amendments can provide those rules.

★ ★ ★ ★

Brown: *"We look at Federalist 16, 26, and 33: Alexander Hamilto-Hamilton talking about the power that we the people and we the States have to push back against federal tyranny. Madison picks it up in Federalist 44 and 46, 46 especially. And what's interesting is, in all of those documents where they're talking about what to do to push back against federal tyranny, they never mention Article V. In fact, when you go onto Federalist 48 and 49, Madison directly addresses that."*

Correction: Notice how Mr. Brown's sources for the ratification debates consist solely of *The Federalist*—a minuscule fraction of the ratification record. He never mentions the other founding-era commentators who spoke to the amendments convention process.[17] Even his use of *The Federalist* is clumsy. For example, at this point he overlooks references to the Article V convention process in Federalist No. 43 and No. 85.

★ ★ ★ ★

Brown: *"In 49, [Madison] asks, 'Is it appropriate to use a Convention to address breaches in the Constitution when the federal government ignores it?' And his answer is absolutely not . . . ."*

Correction: This is another example of Brown's inept use of *The Federalist*. Trying to convert one of its essays into an argument against the Constitution's amendment process makes no sense at all. *The Federalist* was written to support the Constitution, not trash it.

Here's the real scoop on Federalist No. 49: When Madison was writing, Pennsylvania and Vermont had constitutions that provided for a "council of censors" to meet every seven years. The censors could decide whether their state constitution was working well. The censors could call a constitutional convention to address any problems.

In 1783, Thomas Jefferson outlined his own ideas for a new Virginia constitution. In partial imitation of the Pennsylvania-Vermont approach, his draft would have permitted some state officials to call a convention for "altering this Constitution or correcting breaches of it." Strikingly, this new convention was to have all the powers enjoyed by a plenary constitutional convention—including power to write an entirely new document and impose all its changes without a ratification procedure.

Madison had four objections: (1) A rogue state legislature could block the process in various ways; (2) "frequent appeals" for constitutional revision could reduce public respect for government; (3) frequent referrals to the citizenry might cause constitutional turbulence; and (4) the legislature—the branch most likely responsible for the problems—might highjack the process.

Notice that *none* of these objections is relevant to calling a convention under Article V. The states, not federal officials, initiate and staff the convention, thereby preventing congressional obstruction or control. Article V is very difficult to trigger, eliminating the danger of "frequent appeals." A convention for proposing amendments has power only to propose specified amendments, not re-write

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[17] For collections of this material, see, for example, my following two articles: Is the Constitution's Convention for Proposing Amendments a 'Mystery'? Overlooked Evidence in the Narrative of Uncertainty, 104 MARQUETTE L. REV. 1 (2020) and Founding-Era Conventions and the Meaning of the Constitution's "Convention for Proposing Amendments," 65 FLA. L. REV. 615 (2013). See also A Founder Gives Us a Lesson on the Constitution's Amendment Process, https://articlevinfocenter.com/founder-gives-us-lesson-constitutions-amendment-process/.

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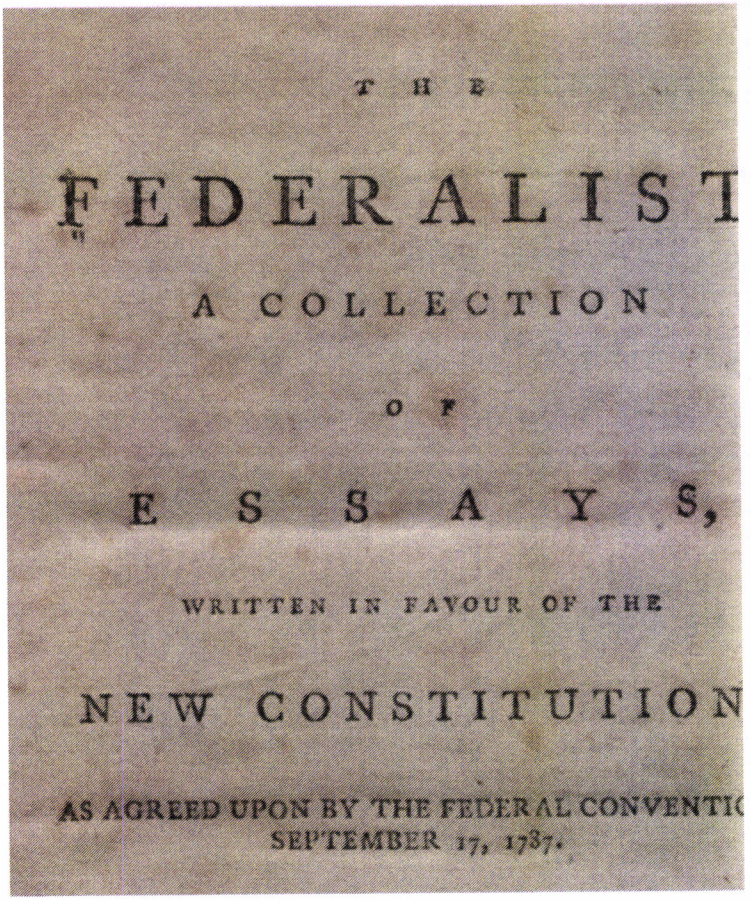
THE
FEDERALIST
A COLLECTION
OF
ESSAYS,
WRITTEN IN FAVOUR OF THE
NEW CONSTITUTION
AS AGREED UPON BY THE FEDERAL CONVENTIO
SEPTEMBER 17, 1787.

the Constitution. And unlike Jefferson's idea for periodic plenary constitutional conventions, any proposal from an Article V convention is subject to a difficult ratification process.

In a portion of Federalist No. 49 Brown fails to quote, Madison assures us that, although he objects to Jefferson's plan, still "a constitutional road to the decision of the people ought to be marked out and kept open, for certain great and extraordinary occasions."

Unlike the proposals Madison was criticizing, the convention procedure of Article V seems to meet his goal very well.

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Brown: *"Now, in Federalist uh, I think it was 43, yeah, in Federalist 43, Madison does address the Article V Convention. And in that case, he refers to it as "the remedy for errors" in the Constitution."*

Correction: Mr. Brown is repeating—perhaps is the author of—a common JBS claim that the only role for an amendments convention was to correct drafting errors in the Constitution.

This is still more nonsense. The fact that Madison stated one purpose of the convention procedure does not mean he excluded other purposes. Other Founders itemized additional purposes. One was the need to correct federal abuses and overreach. That was the reason George Mason gave at the Constitutional Convention. During the ratification debates, prominent advocates cited the convention procedure again and again as a key safeguard against abuse.[18]

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[18] *See, e.g.*, The Founders Pointed to Article V as a Cure for Federal Abuse, https://articlevinfocenter.com/the-founders-pointed-to-article-v-as-a-cure-for-federal-abuse/ *(collecting examples).*

It also ill behooves an organization to complain about length of time when it has had over 50 years for its own "solutions" to work.

Brown: *"Article V has never been used technically, as far as the convention mode. It has no track record of any success other than, well, it did pressure Congress into passing the 17th Amendment, which I wouldn't really consider a good thing but, on the other hand, nullification is just one of many tools in our quiver."*

Correction: Mr. Brown incorrectly uses the term "nullification" to refer to all methods of what Madison called "interposition." In constitutional scholarship, "nullification" usually refers to formally adopting a state law or state convention resolution declaring that a federal law is void within state boundaries. The Constitution has no provision for nullification and, contrary to JBS claims, Madison firmly opposed it—recommending an Article V convention instead.[19]

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Brown: *"Well, y'know, in that light, it really gives a feeling of there's a sense of urgency here: We've gotta get something done, we've gotta do it soon. And if we look at the timetable, Convention of States is the example again, they've been around for seven years, they've gotten less than halfway to the thirty-four states mark. If they don't lose momentum . . . we're looking at another ten years before they get to 34 states.*

"They also admit that there will be numerous legal challenges stalling the process along the way. When we eventually get to a convention, Congress calls the convention, they finally conclude their—their whatever amendment proposals they come up with, and then it goes out to the States for ratification. . . . You're looking at a minimum of 20 years for anything to actually go into effect from a convention. I don't think we have 20 years to turn this around."

Correction: It ill behooves someone who had been slowing down a process to gripe about it being slow. On several occasions in recent American history, we have been at the cusp

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[19] *James Madison to Edward Everett, Aug. 28, 1830,* https://articlevinfocenter.com/wp-content/uploads/2021/02/1830-0828-JM-to-E-Everett.pdf.

of a convention only to see JBS and other alarmists frighten people away.

It also ill behooves an organization to complain about length of time when it has had over 50 years for its own "solutions" to work. Of course, they haven't worked, and by any measure, the political system is more dysfunctional than ever.

History shows that once a popular amendment is proposed, it can be ratified in fairly short order—depending on the proposal, 15 months is a reasonable estimate. The 26th Amendment was ratified in slightly more than three months.

As for litigation: Mr. Brown probably is wrong on this one as well. The Convention of States Project application is designed in a way to minimize the chances of lengthy litigation. (That is not true of the non-uniform applications promoted by some other Article V organizations.)

★ ★ ★ ★

Brown: *". . . the moment. . . the balanced budget becomes a higher priority than all these other programs, then Congress will make it their highest priority as well and will pass a balanced budget.*

"So, the problem really isn't Congress, it really isn't the federal government, it really comes down to what we the people tolerate."

Correction: This reflects Mr. Brown's ignorance of how the federal government works. As the Public Choice school of economics has documented, politicians respond to incentives. Over the long term, these incentives are more important than the character of the politicians themselves. When the incentives are bad, the results usually are bad. When the incentives are good, the results usually are good. However, concentrated special interests, with media support, almost always can offer stronger incentives than the diffused public. There are various ways to change incentives, but one of the most direct is to alter the system in which political actors work—by constitutional amendment.

When given the opportunity for constitutional change, people act differently than they do from day to day. Take the balanced budget amendment as an example: Right now, Congress has strong incentives to deficit-spend and very weak incentives to balance the budget. Special interests fight for as much federal booty as they can, knowing that if they don't do so, the spending will happen anyway—but it will go to someone else. Fiscal conservatives have never been able to match that clout, even though they probably comprise most of the U.S. population.

But when people are given a chance to adopt a rule that they know (1) is for the good of all and (2) will bind others as much as themselves, they act very differently. A carefully-worded balanced budget amendment will *never* be proposed by Congress—the incentives to deficit spending are too strong. But if a convention of the states proposed it, it probably would be ratified fairly quickly.

Conclusion

Mr. Brown has little knowledge of constitutional history, constitutional law, law in general, or government operations. But his claims to expertise have certainly helped to disable a key constitutional check-and-balance. Brown proposes other remedies, but he and his predecessors have argued for those remedies for decades, while federal dysfunction grows ever worse.

Our ability to extricate ourselves from our current political problems depends heavily on whether we use the most powerful tool the Founders gave us for correcting federal dysfunction and abuse. The time for using it is here—in fact, it has been here for a very long time.